

EXHIBIT X
TO THE DECLARATION OF
JOHN W. SMITH T

Page 1

1 IN THE CIRCUIT COURT OF THE 20TH JUDICIAL CIRCUIT
2 IN AND FOR COLLIER COUNTY, FLORIDA
3 GENERAL JURISDICTION DIVISION

4 CASE NO. 09-7336 CA

5 DEUTSCHE BANK TRUST COMPANY)
6 AMERICAS AS TRUSTEE FOR RALI)
7 2007QS3,)
8 Plaintiff,)
9 vs.)
10 BARRY F. MACK A/K/A BARRY FRITZ)
11 MACK A/K/A BERRY FRITZ MACK,)
12 et al.,)
13 Defendants.)
14 -----X

15
16 VIDEOTAPED DEPOSITION OF FORREST G. McSURDY

17
18 taken before Cindy Hart, Court Reporter and
19 Notary Public in and for the State of Florida at
20 Large, at Suite 1500, 1441 Brickell Avenue,
21 Miami, Florida, on Tuesday, April 17, 2012,
22 commencing at 11:05 a.m., pursuant to Defendants
23 Mack's Notice of Taking Videotaped Deposition of
24 Corporate Representative of Law Offices of David J.
25 Stern, P.A.

<p>1 APPEARANCES: 2 BRADLEY, ARANT, BOULT, CUMMINGS, LLP. (BY MR. JOHN W. SMITH T) 3 One Federal Place 1819 Fifth Avenue North, 4 Birmingham, Alabama 35203-2104 On behalf of the Plaintiff.</p> <p>5 GARBER, HOOLEY & HOLLOWAY, LLP. 6 (BY MR. DAVID F. GARBER) Suite 202 7 700 Eleventh Street South, Naples, Florida 34102 8 On behalf of the Defendants.</p> <p>9 TEW CARDENAS, LLP. (BY MR. JEFFREY TEW) 10 Suite 1500 1441 Brickell Avenue 11 Miami, Florida 33131 On behalf of the Deponent.</p> <p>12 ALSO PRESENT: 13 MR. SYLVANUS HOLLEY, Videographer.</p> <p>14 15 16 I-N-D-E-X 17 WITNESS DIRECT CROSS REDIRECT RECROSS 18 FORREST G. MCSURDY 19 BY MR. GARBER 5 121 20 BY MR. SMITH T -- -- 21 BY MR. TEW 120 -- 22 23 24 25</p>	Page 2	<p>1 VIDEOGRAPHER: We're here today April 2 17th, year 2012. Time is approximately 11:05 a.m. 3 We're here for the videotaped deposition of Forrest 4 G. McSurdy in the matter of Deutsche Bank Trust 5 Company versus Barry F. Mack, et al.</p> <p>6 Court reporter today is Cindy Hart from 7 Porter, Walker & Associates. Videographer is 8 Sylvanus Holley with Legal Video Services, Inc.</p> <p>9 Would counsel please announce their 10 appearance for the record.</p> <p>11 MR. GARBER: David Garber on behalf of the 12 Defendants, Mr. and Mrs. Mack.</p> <p>13 MR. TEW: Jeffrey Tew on behalf of the 14 witness.</p> <p>15 MR. SMITH T: My name is John Smith T. 16 I'm here on behalf of the Plaintiff, as well as GMAC 17 Mortgage.</p> <p>18 Just let me say for the record that this 19 deposition is being made subject to the detective 20 order which was approved by the parties and is being 21 entered by the Court.</p> <p>22 And as a result of the hearing on April 23 11th before Judge Manalich, the deposition also is 24 subject to certain limitations as to scope. Thank 25 you.</p>
<p>1 E-X-H-I-B-I-T-S 2 DEFENDANT'S FOR IDENTIFICATION PAGE 3 A - Master Services Agreement 7 4 B - Complaint 28 5 C - Answer and Counterclaims of Defendant 30 6 D - Answer and Affirmative Defenses To 32 Counterclaim</p> <p>7 E - Deutsche 000979 - Deutsche 001068 48 8 F - Response of Law Offices of David J. 48 Stern, P.A. To Defendants' Subpoena Duces Tecum Without Deposition</p> <p>10 G - Deutsche 001176 - Deutsche 001355 69 11 No. 2 - New Trak notes history 93 12 H - Two pages e-mails dated August 25, 2009 107 and August 18, 2010</p> <p>13 14 15 16 17 18 19 20 21 22 23 24 25</p>	Page 3	<p>1 Thereupon: 2 FORREST G. MCSURDY, 3 after having been first duly sworn, was examined 4 and testified as follows: 5 DIRECT EXAMINATION 6 BY MR. GARBER: 7 Q. Would you please tell us your full name, 8 sir. 9 A. Forrest, middle initial G. McSurdy. 10 Q. And what year were you born? 11 A. 1956. 12 Q. Where do you live? 13 A. I live in Miami. 14 Q. Are you an attorney? 15 A. Yes. 16 Q. When did you become licensed to practice 17 law? 18 A. 1981. 19 Q. Where did you go to law school? 20 A. University of Miami Law School. 21 Q. What firm are you employed with now? 22 A. Law Offices of David J. Stern, P.A. 23 Q. How long have you been with David Stern? 24 A. Since December of 1995. 25 Q. What types of duties have you undertaken</p>

<p>1 while working at the Offices of David Stern? 2 A. Initially I was hired as a litigation 3 attorney to handle contested foreclosure matters. 4 The firm was approximately five attorneys at that 5 point and maybe 10 paralegals. 6 As the firm grew, I became the head of the 7 litigation department and eventually I also took on 8 duties of general counsel and doing appellate work. 9 Q. Were you working there in the summer of 10 2009? 11 A. Yes. 12 Q. And you were head of the litigation 13 department at that time? 14 A. Yes. Well, mostly general counsel but 15 also head of the litigation department. 16 Q. How many people were employed there at 17 that time? 18 A. What time is that again? 19 Q. In the summer of 2009. 20 A. Oh, I would say about between 1,000 and 21 1200. 22 Q. That worked at the Offices of David Stern? 23 A. Yes. 24 Q. How many were lawyers? 25 A. 125, 130.</p>	<p>Page 6</p> <p>1 review this and I'll ask you a few questions. 2 A. Okay. 3 Q. Have you ever seen this contract before? 4 A. I have. 5 Q. This is a contract that was produced to us 6 by Deutsche Bank and it's numbered on the bottom 7 right hand corners double 01069 through double 01104. 8 On the first page, which is 1069, is that 9 the signature of David Stern? 10 A. It looks like his signature, yes. 11 Q. If you'd be so kind as to turn to page 12 1071. Was it the understanding that either party can 13 terminate the agreement by default of the other party 14 which remains uncured for 30 days after being 15 notified in writing of the default? 16 A. Are you asking me is that what the 17 agreement says? 18 Q. That's what it says. Is that the practice 19 that you understood would be employed? 20 A. I didn't have an understanding with 21 respect to that. 22 Q. At the bottom of that page, paragraph 6.1, 23 it says that "Company represents and warrants that 24 the Services will be performed in a diligent and 25 workmanlike manner" by David Stern's law office. Do</p>
<p>1 Q. The rest were support personnel? 2 A. Yes, of some fashion, paralegals, clerks, 3 accounting. 4 Q. We are involved in a lawsuit in which 5 Deutsche Bank is the Plaintiff and my clients, 6 Mr. and Mrs. Mack, are the Defendants. Deutsche 7 Bank's interests have been handled by General Motors 8 Acceptance Corporation mortgage division. 9 Did you handle any cases for General 10 Motors, GMAC, in the summer of 2009? 11 A. If I did, it would have been an appeal. 12 It would not have been a litigation matter. That is 13 litigation, but I wouldn't have been involved in the 14 actual litigation of the case. 15 Q. Have you ever seen the contract that the 16 Offices of David Stern entered into with GMAC? 17 A. Yes, I have seen it. 18 MR. GARBER: I have a couple of copies 19 here, and I would ask the court reporter if she would 20 be so kind as to mark this as Exhibit A to our 21 deposition, and a copy for you Mr. Smith T. 22 (Thereupon, Master Services Agreement 23 was marked as Defendant's Exhibit A, for 24 Identification.) 25 Q. (BY MR. GARBER) Please take a minute to</p>	<p>Page 7</p> <p>1 you see that? 2 A. Yes. 3 Q. And you would agree with me that you 4 performed your work in a diligent and workmanlike 5 manner as the attorney for GMAC? 6 MR. SMITH T: Object to form. 7 THE WITNESS: You mean in all matters that 8 were handled by the --- 9 Q. (BY MR. GARBER) Yes, that was your 10 practice? 11 A. That was the attempt, yes, to do that. 12 Q. Was that your practice? 13 A. The practice? 14 Q. Yes. 15 A. I believe it was. We obviously are human 16 and make mistakes, but that was the attempt to 17 practice. 18 Q. Okay. Please turn to the next page, 1072. 19 Under 6.4 it says, "Company," that's David Stern, 20 "represents and warrants that Company's actions and 21 performance of the Services are and will be in full 22 compliance with all the applicable federal, state, 23 and local requirements, the state laws and 24 regulations; any valid and effective order, verdict, 25 judgment, consent decree or agreement."</p>

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<p>1 Was that the general practice also of 2 David Stern to uphold that paragraph 6.4 with respect 3 to GMAC cases? 4 A. Yes, that was the goal. 5 Q. In paragraph number seven on that same 6 page, it says, "When Company is performing Services 7 on Client's premises," clients is GMAC. Did the 8 company ever perform services on client's premises? 9 A. The company did have at least one person 10 that I know of on site at the client's premises. 11 Q. And where was that? 12 A. Pardon me? 13 Q. Where was that? 14 A. I don't know which of the main GMAC field 15 offices that was at. It might have been Horsham, PA 16 or it might have been in Iowa. They had many 17 different --- 18 Q. Were you aware there's a litigation 19 department responsible for foreclosures in Fort 20 Washington, Pennsylvania? 21 A. Fort Washington, that's near Horsham, yes, 22 that's the same area. I grew up in Philadelphia. 23 Q. Okay. Do you know if that's where David 24 Stern maintained its client or its employee? 25 A. No, I'm sorry.</p>	<p>1 employee of David Stern? 2 A. He was to facilitate the movement of 3 foreclosure cases. For example, if the law firm -- 4 if it were a contested case, a litigated case and the 5 law firm had asked for documents to comply with 6 production requests and the law firm had not gotten 7 them in a timely manner, he would get involved to try 8 to get GMAC to comply with the requests. 9 Q. Who was his immediate supervisor when he 10 worked for David Stern? 11 A. I don't know. Other than David Stern, he 12 probably came under the jurisdiction of the office 13 manager, Cheryl Sammons. 14 Q. Where is Ms. Sammons now? 15 A. I have no idea. 16 Q. She was the office manager? 17 A. Yes. 18 Q. For how long? 19 A. She was office manager when I started in 20 '95 and I believe she was -- her employment stopped 21 sometime in September of 2010. 22 Q. When did Kevin Crecco stop being an 23 employee of David Stern? 24 A. I don't know. 25 Q. Now, under this paragraph seven of the</p>

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1 MR. SMITH T: Object to form. Asked and
2 answered.
3 Q. (BY MR. GARBER) Do you know the name of
4 that employee?
5 A. Kevin Crecco I believe was his name,
6 C-r-e-c-c-o.
7 Q. Do you know when they first maintained him
8 as an employee in Pennsylvania?
9 A. No, I'm sorry, I don't.
10 Q. So he was working for the Law Office of
11 David Stern, but he was situated on site with GMAC;
12 is that correct?
13 A. Which period of time are you speaking of?
14 Q. Well, the summer of 2009.
15 A. I don't know. Initially he -- to my
16 knowledge, he started out as an employee of GMAC and
17 at some point he became an employee of the Law
18 Offices of David Stern, on site.
19 Q. Okay. When he became an employee of David
20 Stern, did he move down to Fort Lauderdale or Miami?
21 A. I don't believe so, but I don't know.
22 Q. He just stayed up in wherever he was?
23 A. My understanding, he was physically at the
24 GMAC facility.
25 Q. Okay. What were his functions as an

1 contract, it says that the Company will maintain a
2 log of the names of personnel and times when they
3 have possession of such keys or access devices.
4 Do you know if the company did maintain
5 such a log, the company being David Stern?
6 A. No, I don't. Cheryl Sammons probably
7 would have noted that.
8 Q. Under paragraph eight under "Place of
9 Performance," it says that the services shall take
10 place in any of the 50 states of the United States.
11 Did David Stern represent GMAC in any
12 other state other than Florida?
13 A. I do not believe so.
14 Q. On page 1073 it says, "Company," that's
15 David Stern, "shall provide assurance satisfactory to
16 Client that Company's personnel meet the rules,
17 regulations of Client pertaining to work history and
18 qualifications." That's at the top under paragraph
19 looks like 8.3. Do you see that?
20 A. Yes.
21 Q. Did David Stern provide assurances to GMAC
22 concerning the personnel that worked at David Stern?
23 A. I have no knowledge of that, sorry.
24 MR. SMITH T: I'll just say for the record
25 that Mr. McSurdy was not tendered today to interpret

<p>1 this document. I'm not objecting to his answering 2 questions that may be within his personal knowledge, 3 but I do want that on the record.</p> <p>4 Q. (BY MR. GARBER) Under paragraph 8.4, 5 "Company shall provide Client with the name of each 6 person assigned to work on Client's premises, and 7 shall immediately update such information whenever 8 changes occur."</p> <p>9 Outside of Mr. Crecco, there was no other 10 personnel that worked on client's premises, correct?</p> <p>11 A. I know of no one else, but that doesn't 12 mean that there was not someone before him or after 13 him. Again, Cheryl Sammons would know that. I do 14 not know that.</p> <p>15 Q. If you would be so kind as to turn to page 16 1074, paragraph 13.1. "Company shall, at its own 17 expense, defend, indemnify, and hold harmless GMAC 18 and its employees." Do you see that paragraph?</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware that a judgment was entered 21 against GMAC in the case of Deutsche -- or against 22 Deutsche Bank in the case of Deutsche Bank versus 23 Mack, which is the case I'm representing the Macks on 24 here?</p> <p>25 A. Yes.</p>	<p>Page 14</p> <p>1 Work product and attorney-client privilege. 2 I point out that there is pending 3 litigation between GMAC and the law firm, the Stern 4 law firm pending here in the Southern District of 5 Florida.</p> <p>6 MR. GARBER: I have a series of questions 7 about indemnification and agreements, and can we just 8 agree that you will make a continuing objection to 9 all those and I won't have to ask him?</p> <p>10 MR. TEW: Yes.</p> <p>11 MR. GARBER: Okay, thank you, sir.</p> <p>12 Q. (BY MR. GARBER) Please turn to page 1081, 13 paragraph 3.1. It says that "All Confidential 14 Information, including copies thereof, shall be 15 promptly returned to Discloser upon request."</p> <p>16 Do you know if any confidential materials 17 were returned to GMAC at the termination or during 18 the pending Mack case with Deutsche Bank?</p> <p>19 MR. SMITH T: Object to form.</p> <p>20 THE WITNESS: No.</p> <p>21 Q. (BY MR. GARBER) You don't know?</p> <p>22 A. I do not know.</p> <p>23 Q. Please turn to the next page, which is 24 1082. This is a Change Order to the contract. It's 25 dated April 18, 2007 and on the next page, which is</p>
<p>1 Q. Are you aware that that judgment was 2 entered while David Stern was still the attorney of 3 record in the case?</p> <p>4 A. Yes.</p> <p>5 Q. Has David Stern done anything to indemnify 6 GMAC with respect to the entry of that judgment?</p> <p>7 MR. TEW: I'm gonna object and instruct 8 him not to answer. It's beyond the scope of this 9 deposition, it has nothing to do with the case at 10 hand, and it would go into privileged and work 11 product.</p> <p>12 MR. GARBER: So you're objecting on the 13 basis of attorney-client privilege?</p> <p>14 MR. TEW: And work product.</p> <p>15 MR. GARBER: And work product.</p> <p>16 MR. TEW: And it's well outside the scope 17 of the Mack case.</p> <p>18 MR. GARBER: Okay. I'll be asking several 19 questions in that area, so please make your 20 objections.</p> <p>21 MR. TEW: Okay.</p> <p>22 Q. (BY MR. GARBER) Has David Stern made any 23 efforts to settle claims that Deutsche Bank or GMAC 24 may have with respect to the Macks?</p> <p>25 MR. TEW: Same instruction not to answer.</p>	<p>Page 15</p> <p>1 1083, it appears to be signed by David Stern. Is 2 that his signature?</p> <p>3 A. That appears to be his signature, yes.</p> <p>4 Q. Under the middle portion of the first 5 paragraph on page 1082, the first indentation says 6 that with regard to the client, "Notification of any 7 incident that impacts the confidentiality of Client 8 Information will be made no later than 24 hours after 9 the identification of the incident." Do you see 10 that, sir?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Was GMAC notified of any matter that 13 impacted the confidentiality of GMAC with respect to 14 the Mack case at any time during its conduct by 15 Stern?</p> <p>16 A. I did not see any notification of that 17 type.</p> <p>18 Q. Further down in the same paragraph it 19 says, "A representative of the Company will notify 20 the Client security contact Becky Stoffel and 21 relationship manager Linda Walton by phone and e-mail 22 within 24 hours" of an incident.</p> <p>23 Do you know if any phone calls were made 24 to either of those employees of GMAC?</p> <p>25 A. No, I do not know.</p>

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<p>1 Q. Do you know if any e-mails went to them? 2 MR. SMITH T: You're limiting it to the 3 Mack case I'm assuming? 4 MR. GARBER: Yes. 5 MR. SMITH T: I don't think that was clear 6 from your question, but I assumed that. Just wanted 7 to be clear. 8 MR. GARBER: Yes, I mean, with respect to 9 the Mack case. 10 THE WITNESS: I think he may have said 11 that, too. 12 No, I do not. In my review of the file, 13 the records involving the Mack case, I did not see 14 any e-mails, so I have no knowledge of any e-mails. 15 Q. (BY MR. GARBER) What did you review prior 16 to your deposition here today? 17 A. At what time? 18 Q. Within the last week or two. 19 A. I reviewed all of the documents that have 20 been produced to the Macks pursuant to the subpoena 21 that was issued. 22 Q. Anything else? 23 A. I reviewed the law firm litigation file 24 with respect to the ongoing collection action. 25 Q. That's the lawsuit against GMAC?</p>	<p>1 A. Fort Lauderdale. 2 Q. Do you know his address? 3 MR. TEW: I'm gonna instruct him not to 4 answer. I don't see any relevance to that. 5 MR. GARBER: Well, it's possible we may 6 want to take his deposition. 7 MR. TEW: Well, then you can contact me 8 and if you have an appropriate request to have his -- 9 I'll certainly accommodate it, but I don't want his 10 address on the record for obvious reasons. 11 MR. GARBER: I understand. 12 Q. (BY MR. GARBER) Okay, would you be so 13 kind as to turn to page 1086. And at the bottom of 14 the page, paragraph number III, it talks about the 15 business requirements for foreclosures. Do you see 16 that, sir? 17 A. Yes. 18 Q. And was it the practice of the Offices of 19 David Stern to obtain all relevant and required 20 information and documentation for completing the 21 first legal action in the foreclosure process with 22 respect to the Mack case? 23 A. Yes. 24 Q. Was it also the practice of David Stern 25 and did they follow that practice with respect to the</p>

<p>1 referring to.</p> <p>2 A. I believe they are referring to the Notice</p> <p>3 of Default with respect to a pre condition to</p> <p>4 bringing the foreclosure action under the terms of</p> <p>5 the mortgage.</p> <p>6 Q. I see. Do you know if there was a Notice</p> <p>7 of Default that was sent out in the Mack case?</p> <p>8 A. I don't remember seeing one in our file,</p> <p>9 but that doesn't mean that it was not sent out.</p> <p>10 Sometimes the lenders, GMAC was one of them, would</p> <p>11 send it out without our office being given copies.</p> <p>12 Q. Would you turn now to page 1090, paragraph</p> <p>13 number VIII, "Invoicing." "Company," that's David</p> <p>14 Stern, "shall submit all invoices to Client using the</p> <p>15 electronic invoicing system Client presently uses."</p> <p>16 Do you know what that invoicing system</p> <p>17 was?</p> <p>18 A. No, I don't know which one was their</p> <p>19 use -- which was the one that they used.</p> <p>20 Q. Did David Stern send an invoice to GMAC</p> <p>21 for handling the Mack case?</p> <p>22 A. I did see an invoice in the file, yes.</p> <p>23 Q. Do you know when that was sent out?</p> <p>24 A. No, I don't recall off the top of my head.</p> <p>25 Q. Was there only one invoice sent out?</p>	Page 22	<p>1 paragraph under IX, "If Company fails to meet any of</p> <p>2 the committed SLAs, Client will take the following</p> <p>3 actions." Can you tell us what an SLA is.</p> <p>4 A. I'd have to look back in the agreement to</p> <p>5 see where it was defined.</p> <p>6 Q. Now, it says, the "Client will take the</p> <p>7 following actions," but when you read them, it seems</p> <p>8 that it's actually company that takes the following</p> <p>9 actions. Do you know if that's a typo, who was</p> <p>10 supposed to take those actions?</p> <p>11 A. I do not know.</p> <p>12 Q. Okay. Well, let's look at the second one,</p> <p>13 "Report of failure to Client within 48 hours." Was</p> <p>14 it the agreement of David Stern to report a failure</p> <p>15 to GMAC within 48 hours?</p> <p>16 A. In the Mack case?</p> <p>17 Q. Yes.</p> <p>18 A. I do not see any such reports.</p> <p>19 Q. Was it the practice of David Stern, and</p> <p>20 did they follow that practice, with respect to the</p> <p>21 Mack case, to promptly initiate an investigation to</p> <p>22 identify the root cause of the failure?</p> <p>23 A. My review of the file did not indicate</p> <p>24 that there was any problem at the time it was being</p> <p>25 handled.</p>	Page 24
<p>1 A. I believe there were at least two sent.</p> <p>2 Q. Would they have been sent by regular mail?</p> <p>3 A. This was in 2009. No, I believe it would</p> <p>4 have been sent electronically.</p> <p>5 Q. What system would be used to send it</p> <p>6 electronically?</p> <p>7 A. Again, there were several systems that</p> <p>8 different clients required us to use. One was called</p> <p>9 New Invoice, one was called I think, I want to say</p> <p>10 iClear, but I just got an iPhone and it might not be</p> <p>11 the right term, so I'm not sure which one GMAC</p> <p>12 required, but whatever the electronic system was, we</p> <p>13 would have used it.</p> <p>14 Q. Would that be different than the New Trak</p> <p>15 system that was referred to earlier in the contract?</p> <p>16 A. Yes, that's separate.</p> <p>17 Q. Would it also be different than the MS</p> <p>18 system that was referred to earlier in the contract?</p> <p>19 A. I am not familiar with the MS system. If</p> <p>20 it goes by another name, I may know it, but MS,</p> <p>21 Microsoft that means to me.</p> <p>22 Q. Towards the bottom of the page, paragraph</p> <p>23 number IX, if you'd look at that, please.</p> <p>24 A. Okay.</p> <p>25 Q. In the last sentence of the first</p>	Page 23	<p>1 Q. So at no time while the Offices of David</p> <p>2 Stern was handling the Mack case were they aware of</p> <p>3 any problem with the case; is that true?</p> <p>4 A. That's true.</p> <p>5 Q. Okay. So none of these actions would have</p> <p>6 been taken?</p> <p>7 A. Not that I had saw in the file.</p> <p>8 Q. If you'd be so kind as to turn to page</p> <p>9 1094. Please look at the bottom of the page, number</p> <p>10 VI, "Supplier is required to install a hard drive and</p> <p>11 e-mail encryption on machines, computing equipment</p> <p>12 which will be used to fulfill GMAC RFG contractual</p> <p>13 obligations." Now, I believe "Supplier" in this case</p> <p>14 is David Stern.</p> <p>15 Did David Stern supply encryption and hard</p> <p>16 drives on their machines in order to communicate with</p> <p>17 GMAC?</p> <p>18 A. I don't know. I never had conversations</p> <p>19 with our IT people regarding that. I don't know.</p> <p>20 Q. The last -- it's not a sentence but it's a</p> <p>21 phrase on that page, it says, "All e-mails sent to</p> <p>22 GMAC with any personal/confidential information on a</p> <p>23 borrower."</p> <p>24 Do you know if David Stern sent any</p> <p>25 personal/confidential information on a borrower to</p>	Page 25

1 GMAC with respect to the Macks? 2 A. I didn't see anything in the file in that 3 regard. 4 Q. Page number 1098, if you'd be so kind as 5 to turn to that, paragraph number XIII. It says, 6 "Neither Party shall, without the prior consent of 7 the other Party, intentionally solicit for employment 8 any personnel of the other Party." Do you see that, 9 sir? 10 A. Yes. 11 Q. Did David Stern solicit Kevin Crecco to 12 work for them without the permission of GMAC? 13 A. I don't know how he came to the employ of 14 David Stern with respect to this sort of agreement. 15 Q. When he was an employee of David Stern, 16 was he paid solely and directly by David Stern, by 17 the Office of David Stern? 18 A. I don't know if he was paid solely and 19 directly by David Stern's office. 20 Q. His principal duties, though, remained at 21 the GMAC site that he had previously worked? 22 MR. SMITH T: Object to form. 23 THE WITNESS: Yes, he did not work in the 24 Law Offices of David Stern physical building. 25 Q. (BY MR. GARBER) Do you know if anybody	Page 26	Page 28
1 contacted him regarding the Mack case from David 2 Stern's office? 3 A. No, I do not know. 4 Q. Do you know if Cheryl Sammons had any 5 knowledge of the Mack case? 6 A. I did not see her involvement in the case 7 at all. 8 Q. Do you know any employees that have any 9 knowledge of the Mack case that worked for David 10 Stern? 11 A. The attorney of record, Elsa Shum, would 12 have had knowledge. And my review of the New Trak 13 notes and the comment case history indicated a few 14 dozen employees were involved in the file, clerks, 15 paralegals. So at some point they had some sort of 16 knowledge. 17 Q. Now, as a result of the representation of 18 GMAC Mortgage by the Law Offices of David Stern, a 19 bill accrued that has not yet been paid, didn't it? 20 A. I don't understand the question. 21 Q. GMAC owed money to David Stern sometime in 22 2011, didn't they? 23 A. With respect to the Mack case? 24 Q. No, with respect to many cases. 25 A. Oh, you're talking about many cases. Yes,	Page 27	Page 29

<p>1 attorney left. 2 Q. So you were aware of this Complaint when 3 it was filed? 4 A. Yes. 5 Q. Now, in response to that Complaint, there 6 was an Answer filed and I'm going to hand you a copy 7 of that and ask if you can identify that, and we'll 8 call that Exhibit C. 9 (Thereupon, Answer and Counterclaims of 10 Defendant was marked as Defendant's Exhibit 11 C, for Identification.) 12 Q. (BY MR. GARBER) Please take a look at 13 Exhibit C. Have you ever seen Exhibit C before? 14 A. Yes. 15 Q. One of the allegations in this Complaint 16 is found in the Counterclaim by Defendant GMAC, 17 paragraph number 25. Do you see that, sir? 18 A. Yes. 19 Q. I'm going to read it. It says, "GMAC has 20 since learned that DJSPA --" that's David Stern's 21 offices, right? 22 A. Yes, that's the -- 23 Q. (Continuing) -- "committed gross 24 malpractice in handling the GMACM matters. For 25 example, in one foreclosure matter assigned to DJSPA</p>	<p>Page 30 1 D. 2 (Thereupon, Answer and Affirmative 3 Defenses To Counterclaim was marked as 4 Defendant's Exhibit D, for Identification.) 5 Q. (BY MR. GARBER) Could you please review 6 that when it's ready. 7 A. Did you mean to give me a highlighted 8 copy? 9 Q. No. Actually I meant to keep it for 10 myself. 11 This particular Answer was filed in answer 12 to the Counterclaims of GMAC and in this Answer many 13 allegations are admitted and denied. I would like if 14 you would be so kind as to turn to the second page in 15 paragraph number 18 where GMAC said in their 16 paragraph 18, the sworn deposition testimony of 17 witnesses contained accusations against David Stern 18 that included, among other things, the following, 19 causing and permitting David Stern's employees to 20 execute, witness, or notarize assignments of 21 mortgage. 22 Do you know if David Stern's office did 23 that? 24 MR. TEW: I'm going to instruct him not to 25 answer. We're here as a fact witness on the Mack</p>
<p>1 for handling, DJSPA failed to communicate to GMAC 2 that counterclaims had been brought. Indeed, DJSPA 3 neglected to put forward any defense to such 4 counterclaims, with the result that a default 5 judgment was entered on or about May 5, 2011 for over 6 \$450,000. DJSPA's conduct in this and other 7 instances has been wanton and reckless." 8 With respect to the Mack case in which a 9 judgment was entered on May 5, 2011 for over 10 \$450,000, is that paragraph true? 11 MR. TEW: Let me object. He can answer 12 any factual allegation about the Mack case, but he is 13 not to answer as to any of the legal conclusions 14 contained in that paragraph because he's here as a 15 fact witness, not as a legal expert. 16 So, for example, I'm not going to permit 17 him to answer as to whether there was a, quote, 18 "malpractice." And you can ask him about the Mack 19 case if you'd like factually, but he's not going to 20 respond to the conclusions in that Counterclaim. 21 MR. GARBER: Okay, I will get into that in 22 detail in a few minutes. 23 I have also a copy of the Answer to the 24 Counterclaim which I would like to have marked as our 25 next numbered exhibit. I guess that would be Exhibit</p>	<p>Page 31 Page 33 1 case. I have not heard anything in the Mack case on 2 that subject, so I'm gonna instruct him not to 3 answer. He's not subpoenaed as to those issues and 4 they're totally irrelevant. It's abusive. 5 MR. GARBER: I don't believe that it's 6 irrelevant, I don't think it's abusive, and --- 7 MR. TEW: Where is it in the Mack case? 8 Where is that fact at issue in the Mack case? 9 MR. GARBER: I don't know that this 10 witness has a right to object to relevancy in the 11 Mack case. 12 MR. TEW: Well, I have a right to object. 13 You've called him here to testify. Your subpoena 14 requires him to testify about the Mack case. So, 15 anything that isn't involved in the Mack case I don't 16 think is covered by your subpoena. 17 MR. GARBER: Okay, I think that he can 18 answer he doesn't know if he doesn't know. 19 MR. TEW: I'm not gonna permit him to 20 answer. This is abusive and has nothing to do with 21 the Mack case. It's a fishing expedition, and it's 22 not covered by your subpoena. 23 Q. (BY MR. GARBER) With respect to paragraph 24 18 (i), did David Stern execute any notarized 25 statements or assignments of mortgage that were</p>

<p>1 backdated on the Mack case? 2 MR. TEW: Same instruction on the grounds 3 previously stated. 4 MR. GARBER: I'm asking on the Mack case. 5 MR. TEW: Oh, well, he can testify as to 6 the record. 7 THE WITNESS: David Stern did not, my 8 review of the file, did not sign any documents in the 9 Mack case. 10 Q. (BY MR. GARBER) Okay. And paragraph 11 number two with respect to the Mack case, David 12 Stern's office did not witness or notarize any other 13 documents without having an actual person witnessing 14 the signature, did they? 15 A. I did not see any example of that in the 16 Mack case. 17 Q. Did David Stern's office, with respect to 18 the Mack case, cause or permit their employees to 19 prepare and execute any affidavits of indebtedness? 20 A. In the Mack case, no, the case did not 21 proceed to that extent. It didn't get to the point 22 where an affidavit would have been prepared or 23 executed. 24 Q. So at least with respect to the Mack case 25 then, you would say that that paragraph should be</p>	<p>Page 34</p> <p>1 Q. They never sent a subpoena over to you for 2 recovery of that file? 3 A. No, not to my knowledge. I never received 4 a subpoena. I was the records custodian. 5 MR. SMITH T: David, let me make sure 6 we're all clear on what you're asking because there's 7 been subpoenas obviously served recently that I've 8 been involved in and Mr. Tew's been involved in. Is 9 that what you're asking about, or are you asking 10 about previous to all that? Forrest may be confused 11 and I'm kind of confused. 12 THE WITNESS: Previous, right. 13 Q. (BY MR. GARBER) We sent out a subpoena 14 perhaps a month ago asking for the records. I'm not 15 asking about that. 16 A. Right, I received that. 17 Q. Okay. But in 2010, did GMAC ask for a 18 return of its records with respect to the Mack case? 19 A. Not that I'm aware of and my review of the 20 file did not indicate that they did. 21 Q. Okay. And that's also true of 2011, GMAC 22 did not ask for a return of the file in 2011; is that 23 correct? 24 MR. SMITH T: Well, I'm gonna object to 25 the form because that does get into the period of</p>
<p>1 denied? 2 A. Yes. 3 Q. Paragraph number 21, it says that on or 4 about November 16th GMAC terminated its relationship 5 with David Stern and sought to recover its files from 6 David Stern. Do you see that, sir? 7 A. Yes, I do. 8 Q. Is that a true statement? 9 A. To the best of my knowledge, that's about 10 the date that they terminated their relationship. I 11 don't know exactly the date, but that's what I 12 recall. 13 Q. It says that with respect to the 14 relationship that's admitted in your Answer but the 15 remainder of the allegations of 21 are denied, so I 16 guess that would refer to that GMAC sought to recover 17 its files from David Stern on or about November 16th. 18 A. Or possibly the date is not correct. It's 19 admitted in the Answer that it was terminated, so the 20 date may not be technically correct. 21 Q. Do you know if GMAC sought to recover the 22 Mack file from David Stern? 23 A. I did not -- in my review of the file did 24 not indicate that GMAC ever asked to review the Mack 25 file.</p>	<p>Page 35</p> <p>1 time when I was in discussions with Mr. Tew about 2 obtaining documents relating to this case, and 3 Mr. McSurdy may or may not be aware of all that. I 4 don't know, but anyway, I just want that on the 5 record. 6 Q. (BY MR. GARBER) But do you have any 7 knowledge whether GMAC asked for a return of their 8 file in 2011? 9 A. For the actual return, no. As Mr. Smith 10 has said, they requested certain documents during 11 2011, but the actual file was requested sometime, but 12 I don't know if it was 2011 or 2012. I don't know 13 the time frame. 14 Q. Do you know what documents they requested 15 in 2011 from David Stern? 16 A. They would have been file documents. 17 Q. Did David Stern maintain a file on the 18 Mack case? 19 A. Yes. 20 Q. Was that a paper file? 21 A. It was a paper file and it was an 22 electronic file. 23 Q. Was it duplicative? 24 A. No, it was not necessarily. 25 Q. Is there a particular program the</p>

1 electronic file was maintained in? 2 A. The system is called Case Management 3 System. It's a tracking system for files. CMS for 4 abbreviation. 5 Q. Did David Stern keep track of any 6 telephone calls that they made to GMAC concerning the 7 Mack case? 8 A. Not specifically. There were notes made 9 in this CMS system in the comment history regarding 10 conversations that were held between GMAC and the law 11 firm, and also New Trak indicated communications back 12 and forth. 13 Q. With respect to telephone calls, did you 14 just identify a program that there were telephone 15 calls with GMAC on the Mack case? 16 A. My review of the comment history indicates 17 that there must -- I believe there must have been 18 telephone conversations because of the notes that 19 were written in the comment history. 20 Q. Would that have been with the foreclosure 21 division of GMAC? 22 A. I have no idea. It doesn't indicate. 23 Q. Do you know who David Stern would have 24 dealt with at GMAC, which division? 25 MR. TEW: Are you talking about the law	Page 38	1 status of the case was, for example, the loan was 2 current and the only reason the person at the law 3 firm would know that is if they spoke to someone at 4 GMAC. 5 Q. So would it be fair to say that not all 6 communications were done by typing in, I would call 7 them e-mails into the New Trak system? 8 A. Mostly that's how the communication 9 occurred, but there were sporadic instances of -- it 10 looks to me as if there were a few conversations. 11 Q. I have a copy of a document that was 12 submitted to me. I received it today. It's a 13 response to our subpoena which asks for a copy of all 14 the communications with David Stern or between David 15 Stern and GMAC. Have you ever seen this document 16 before? 17 A. I can't see it from here. 18 Q. Okay. I only have the one copy. 19 MR. SMITH T: David, here's another copy. 20 THE WITNESS: I did see the draft of this 21 response, yes. 22 Q. (BY MR. GARBER) Did you participate in 23 preparing this? 24 A. To the extent of what's attached, I was 25 the one who retrieved it from the system.	Page 40
1 firm? 2 MR. GARBER: Pardon? 3 MR. TEW: When you say "David Stern," 4 you're talking about the law firm? 5 MR. GARBER: Yes, I am, I am talking about 6 the law firm. 7 THE WITNESS: I'm sorry. What was the 8 question again? 9 Q. (BY MR. GARBER) Do you know what division 10 the office would have been dealing with; would that 11 have been the foreclosure division? 12 A. Right, or the default servicing division, 13 whatever they called it. 14 Q. Is the default servicing division 15 different from the foreclosure division? 16 A. I don't know. Each client was different. 17 They called it -- each client called it different 18 things. 19 Q. Would there have been a record of any of 20 those telephone calls? 21 A. If there were, it would have been in the 22 original file. There would have either been 23 handwritten notes in the original file produced or, 24 as I said, in the comment history there would have 25 been an indication. A note would be made that the	Page 39	1 Q. Is this a list of all communications 2 between the Office of David Stern and GMAC with 3 respect to the Mack case? 4 A. Again, I don't know because I haven't 5 looked at the hard file, but if there were other 6 conversations, our practice had been on a sheet of 7 paper it would have been noted the date and the 8 initials of the person who spoke to whomever and 9 there would be hand notes. I don't recall seeing 10 that in this case. 11 Also, New Trak would have, in addition to 12 this, these two go together, New Trak and this report 13 go together to indicate the history of the case. 14 Q. Can you please tell us why they have these 15 different dates and entries on this response. What 16 does this mean? 17 A. This, again, is from our Case Management 18 System called Tracker System and it has different 19 dates because any time -- our policy was any time a 20 person of the firm, paralegals, to the less extent 21 attorneys, should have gone into this computer system 22 and entered why they were in possession of the file, 23 what the status of the file was. 24 So at any time if I wanted a file or David 25 Stern wanted a file, he could go into the computer	Page 41

<p>Page 42</p> <p>1 and he could see the latest date and see where the 2 file was and what was happening.</p> <p>3 Q. So any time anybody took possession of the 4 Mack file, they would have made an entry that would 5 appear on this piece of paper?</p> <p>6 A. That was how it was supposed to work, yes.</p> <p>7 Q. Did it work that way in this case, the 8 Mack case?</p> <p>9 A. To my knowledge, it seems to have worked 10 that way, but again, I don't -- I wasn't involved in 11 it, so I don't know.</p> <p>12 Q. Let's please turn to Deutsche double 13 01366, which is the last page, but it has the 14 earliest dates. Do you have the last page, that page 15 1366?</p> <p>16 A. Yes.</p> <p>17 Q. The first entry is one from 7-29-2009. Do 18 you see that, sir?</p> <p>19 A. Yes.</p> <p>20 Q. It says, "File received 7-24-2009." Do 21 you know what that means?</p> <p>22 A. Yes.</p> <p>23 Q. What does that mean?</p> <p>24 A. That means that Glen -- I don't know how 25 to pronounce his last name. I always called him</p>	<p>Page 44</p> <p>1 Q. Did it go missing at a time that it was in 2 the custody and possession of David Stern?</p> <p>3 MR. SMITH T: Object to form.</p> <p>4 THE WITNESS: That would be my assumption, 5 yes, it would have been misplaced.</p> <p>6 Q. (BY MR. GARBER) And you would agree with 7 me that David Stern, as the lawyer, was responsible 8 for maintaining the files of his clients?</p> <p>9 A. David Stern -- the Law Offices of David 10 Stern is responsible for maintaining the file, yes.</p> <p>11 Q. Now, if we wanted to find out what was 12 sent electronically on that date, is there any way to 13 recover that now?</p> <p>14 A. Possibly from GMAC.</p> <p>15 Q. Only from GMAC?</p> <p>16 A. To my knowledge, yes.</p> <p>17 Q. No way that you can think of that it could 18 be recovered through the Law Office of David Stern?</p> <p>19 A. You could look at the Complaint terms, you 20 could look at the Title Information Sheet, and those 21 two documents were a compilation of what would have 22 been on the referral.</p> <p>23 Q. Do you know if a copy of the note was sent 24 on July 24, 2009, the Mack note?</p> <p>25 A. My review of the file indicated the title</p>
<p>Page 43</p> <p>1 Glen. (Continuing) -- Glen Lewin on the 29th of July 2 entered that comment that the file had been received. 3 He was in the new files department, so he would have 4 opened the file on the 24th and five days later 5 posted to our tracking system that comment.</p> <p>6 Q. Now, when he received the file, would that 7 be an electronic transmission?</p> <p>8 A. In this case it was.</p> <p>9 Q. And was a copy kept of everything that was 10 received on that electronic transmission?</p> <p>11 A. No. Unfortunately, I did not see a copy 12 of the electronic transmission.</p> <p>13 Q. Would it have been the ordinary procedure 14 that, in fact, a copy of those documents would be 15 scanned into your system or placed into your system 16 electronically?</p> <p>17 A. No. It was kept in the hard copy in the 18 file. It was printed by -- printed by Glen and put 19 in the new file and then moved on to the next 20 department.</p> <p>21 Q. Did you look to see if there was a 22 printing of what was received on the 24th?</p> <p>23 A. I did look and I couldn't find anything.</p> <p>24 Q. Does that mean it's missing from the file?</p> <p>25 A. That would be my assumption.</p>	<p>Page 45</p> <p>1 examiner said that they did not have a copy of the 2 note at the time they examined title a few days 3 later.</p> <p>4 Q. Was it normal practice that when the file 5 was sent out by GMAC, it would include a copy of the 6 note?</p> <p>7 A. Sometimes it did; sometimes it didn't.</p> <p>8 Q. Do you know why a note was not here?</p> <p>9 A. No, I don't.</p> <p>10 Q. Would somebody at David Stern, in the 11 ordinary course of events, have contacted GMAC about 12 getting a copy of the note?</p> <p>13 A. Yes, if the original wasn't delivered a 14 few days later, yeah, someone would have followed up 15 to get a copy.</p> <p>16 Q. Okay. So when they got the electronic 17 download of the documents and it didn't have the 18 note, ordinarily David Stern would not follow up with 19 a question at that time?</p> <p>20 A. No, not at that point.</p> <p>21 Q. It says on the 29th a title search was 22 ordered?</p> <p>23 A. Yes.</p> <p>24 Q. That was a title search ordered by the 25 Office of David Stern?</p>

<p>1 A. Yes.</p> <p>2 Q. On the 10th of August there's a note. I 3 guess Brittany Patullo, is that who entered that 4 note?</p> <p>5 A. Yes.</p> <p>6 Q. And it says "7/29 awaiting plaintiff info 7 via NT," is that New Trak?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know what that means?</p> <p>10 A. Yes.</p> <p>11 Q. What does it mean?</p> <p>12 A. It means that Brittany was waiting on July 13 29th to hear from GMAC as to the party that should be 14 the appropriate plaintiff.</p> <p>15 Q. Why was she waiting from 7-29 if Glen 16 Lewin was the one that made the note on 7-29-2009?</p> <p>17 A. Glen was in the new files department. He 18 simply opened the file.</p> <p>19 Q. What did Brittany Patullo do?</p> <p>20 A. I don't know. I assume from the note that 21 she was in the title department because they could 22 not complete the title report without knowing who the 23 client wanted the plaintiff to be.</p> <p>24 Q. The next entry is entered by Oral Walters. 25 Do you see that?</p>	<p>Page 46</p> <p>1 be -- or the next lettered exhibit which would be E, 2 and show it to you.</p> <p>3 THE WITNESS: What do you want me to do 4 with what we were looking at, this Response? Is that 5 an exhibit or not?</p> <p>6 MR. GARBER: Oh, yes, that should be an 7 exhibit, too. We'll mark that ---</p> <p>8 MR. SMITH T: I don't think we marked 9 that.</p> <p>10 MR. GARBER: Let's mark that Exhibit F. 11 (Thereupon, Deutsche 000979 - Deutsche 12 001068 and Response of Law Offices of David J. 13 Stern, P.A. To Defendants' Subpoena Duces Tecum 14 Without Deposition, were marked as Defendant's 15 Exhibits E and F, respectively, for 16 Identification.)</p> <p>17 Q. (BY MR. GARBER) I'd like to refer your 18 attention to the first two pages of Exhibit E.</p> <p>19 A. Before you say that, I need to retract my 20 testimony. I see the referral in this package of 21 documents that was printed out. I did not see it 22 yesterday when I was reviewing the hard copy of the 23 file.</p> <p>24 Q. You see a referral?</p> <p>25 A. The referral that was printed from New</p>
<p>1 A. Uh-huh.</p> <p>2 Q. And that was on 8-10-2009?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "File to cases UM;" is that 5 correct?</p> <p>6 A. Case Um.</p> <p>7 Q. What's that?</p> <p>8 A. Case Um is a department where all the data 9 from the referral and from the title information 10 sheet would be entered into a mergible document to 11 create the Complaint, the lis pendens, and the 12 summonses.</p> <p>13 Q. And that was done in this case?</p> <p>14 A. Yes.</p> <p>15 Q. And is that maintained electronically 16 somewhere?</p> <p>17 A. Once it's merged, it becomes the 18 Complaint, the lis pendens, and the summons. There 19 would be a copy of the Case Um where the attorney 20 would review and there would be checkmarks in the 21 hard copy of the file.</p> <p>22 MR. GARBER: I have a copy of documents 23 that we received from Deutsche Bank and it came 24 purportedly from the Office of David Stern. I'd like 25 to mark this as the next numbered exhibit which would</p>	<p>Page 47</p> <p>Page 49</p> <p>1 Trak.</p> <p>2 Q. From 7-29?</p> <p>3 A. Yes.</p> <p>4 Q. And where is that located in here?</p> <p>5 A. It is Deutsche number 1050. It starts 6 there.</p> <p>7 Q. That is the electronic ---</p> <p>8 A. That's what would have been pulled from 9 the New Trak system, the referral, and printed for 10 the new file to be opened in the office.</p> <p>11 Q. This was what came in on 7-24-09? Because 12 at the top of 1050 it says, Received from New Trak 13 7-24-09.</p> <p>14 A. Yes, and the date is also printed on the 15 document. At the very bottom right hand side you 16 can -- it's hard to see, but it is the 24th of July.</p> <p>17 Q. Can you look at this document that looks 18 like it's Deutsche 1050 through 1055 and tell me if a 19 copy of the note was sent out?</p> <p>20 MR. SMITH T: You mean on that day?</p> <p>21 MR. GARBER: Yes.</p> <p>22 THE WITNESS: No, I can't tell from --</p> <p>23 whether there was an attachment of a copy of the 24 note, in other words, what was printed by Glen on the 25 day that he printed the referral.</p>

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1 Q. (BY MR. GARBER) So you can't tell if any 2 documents were uploaded into New Trak and then 3 downloaded by David Stern on the 24th? 4 A. No, I can't tell from this printout. 5 Q. Would there ordinarily be an electronic 6 way of keeping a record of what documents were 7 downloaded? 8 A. I did not have access to New Trak, so I 9 don't know if once you downloaded something you could 10 go back in and see what was downloaded. I don't 11 know. 12 Q. Turning to the first page of Exhibit E, 13 paragraph number five, it says, "Plaintiff owns and 14 holds the Note and Mortgage." Do you see that, sir? 15 A. Yes. 16 Q. However, in paragraph number four it says, 17 "A copy of the Mortgage AND NOTE ARE attached hereto 18 as 'Exhibit A.'" Do you see that? 19 A. Yes. 20 Q. Now, when we look at the exhibit, Exhibit 21 A is only the mortgage. Do you see that, sir? 22 A. Yes, it only references the note on the 23 first page. 24 Q. So the first page says that the note is 25 attached, but the note was not attached to that	1 Collier County? 2 A. I don't know about the day it was filed. 3 It would be indicative that the copy of the note was 4 not in the file the date the Case Um was drafted. 5 Q. The Complaint was filed in a program you 6 have that merged documents that you received from 7 GMAC to form a Complaint and the lis pendens, 8 correct? 9 A. Correct. 10 Q. And since this document refers to the note 11 and mortgage, was it the ordinary practice of David 12 Stern to include the note and mortgage when they 13 filed a Complaint of foreclosure? 14 A. Yes. If the mortgage were not in the 15 file, then the Complaint should have been revised, 16 but apparently the attorney who signed this did not 17 catch the fact that there was not a note attached. 18 Q. Was Exhibit B placed in substitution for 19 the note? 20 A. Exhibit B was commonly used when a lost 21 note count was a part of the Complaint, but in 22 reviewing this Complaint, when it was filed, there 23 was no lost note Count II, so at that point that 24 indicates to me that the law firm must have been in 25 possession -- someone must have seen before the

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1 Complaint? 2 A. Yes. 3 Q. That's true? 4 A. That's true, I do not see a copy of the 5 note attached. 6 Q. Okay. There is, however, an Exhibit B. 7 Do you see that? 8 A. Yes. 9 Q. Okay. Can you tell us what Exhibit B is? 10 A. Exhibit B is an outline of the relevant 11 terms of the subject note. 12 Q. Do you know who prepared Exhibit B? 13 A. Whoever did the Case Um report. 14 Q. Would that have been somebody at David 15 Stern? 16 A. Yes. 17 Q. So David Stern prepared this document? 18 A. Yes. 19 Q. Where would they have gotten this 20 information? 21 A. From the mortgage document and from the 22 referral. 23 Q. Okay. Would this be indicative of the 24 fact that David Stern did not have the note on the 25 date that this document was filed with the Court in	1 Complaint was filed that the law firm had the note 2 because no lost note was filed, but whoever saw that 3 didn't take it a step further and get the original 4 note copy and attach it to the Complaint before it 5 was filed. 6 Q. Do you have any actual knowledge on which 7 you base that, or is that just your supposition? 8 A. Looking at the comment history report that 9 is attached to the subpoena response, it indicates 10 the original note came in with the law firm. 11 MR. TEW: No, that's not the right one. 12 THE WITNESS: This is it. The original 13 note and mortgage and original title policy received 14 by the law firm on August 10, 2009. The Case Um -- 15 the Complaint looks like it was completed on August 16 11th, so what that indicates to me is the original 17 note and mortgage were delivered to the document 18 team, but the document team did not advise the Case 19 Um department that they had the original note and 20 mortgage so that the Case Um department drafted the 21 Complaint thinking that there was no copy of the note 22 available. 23 Q. (BY MR. GARBER) Case Um would be a 24 department at the Office of David Stern? 25 A. Yes.
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<p>1 Q. The program that produced the Complaint 2 and also the lis pendens, they would have produced 3 both those documents on the same date? 4 A. Yes, they were a part of the same 5 document. 6 Q. I believe we have a copy of the lis 7 pendens in here. Let me see if I can find it. 8 A. It's Deutsche number 1056. 9 Q. Okay. I have a copy at 1012. Let me just 10 look and see if the 56 one is the same. 11 Could you please refer your attention to 12 1012. 1012 has a "Filed" stamp on Collier County 13 Circuit Court of August 20, 2009. Do you see that, 14 sir? 15 A. Yes. 16 Q. But the one at 1056, it does not have a 17 "Filed" stamp. 18 A. Yes, correct. 19 Q. Do you know why they would be different in 20 that respect? 21 A. The document lis pendens at 1012 is a copy 22 provided by Provest, the process server, after the 23 Complaint was filed with the Court case number on it. 24 The other document, 1056, is simply a copy that was 25 signed by the attorney before it was filed with the</p>	<p>Page 54 1 associate attorneys. 2 Q. Now, at the time Misty Barnes signed this 3 Complaint -- and by the way, I see the number of 3100 4 it looks like beneath her name. Do you know what 5 that is? 6 A. I believe that's her Bar number. I don't 7 think it's a complete number there. It looks like 8 3100 and then another digit, which I can't tell what 9 it is. 10 Q. At the time that Misty Barnes signed this, 11 would it have been her responsibility to review the 12 Complaint for completeness? 13 A. She should have, yes. 14 Q. And so if she signed it on August 17th but 15 the Office of David Stern had received the note by 16 August 10th, should she have caught that fact? 17 A. She would have had to have gone into the 18 electronic computer system and seen that the note was 19 received, yes, but I don't know that associate 20 attorneys necessarily did that as a matter of course. 21 Q. Would it have been her responsibility, if 22 she did know there was a note, to attach it as part 23 of Exhibit A as indicated in the Complaint? 24 A. Absolutely. 25 Q. Do you know how these documents that are</p>
<p>Page 55 1 Court. 2 Q. The lis pendens was -- it had the name of 3 Elsa Hernandez Shum as an attorney, but it was 4 actually signed by another attorney and that's the 5 page at 1013. Could you please look at that. 6 A. Yes, I see that. 7 Q. It says it was signed on August 17, 2009. 8 What is the name of the attorney? 9 A. Looks like Misty Barnes signed it. 10 Q. Is that B-a-r-n-e-s? 11 A. Yes, I believe so. 12 Q. Who is Misty Barnes? 13 A. She was an associate foreclosure attorney. 14 Q. Was she a supervisor of Elsa Shum? 15 A. No. 16 Q. Why would she have signed it instead of 17 Ms. Shum? 18 A. At that time a lot of Complaints were 19 being generated and there were more Complaints being 20 generated for review and signature than we had 21 necessarily attorneys on a particular team to sign. 22 Elsa was on the GMAC team, and for example, a batch 23 might have come in from GMAC where there were 200 24 Complaints to be filed, but she couldn't possibly 25 have reviewed them all, so she had help from other</p>	<p>Page 55 1 Deutsche Bank 979 to 1068 came into the possession of 2 Deutsche Bank? 3 A. Are these copies from the hard file? 4 Q. I've been told they were copies of the 5 hard file. 6 A. See, I've never seen the hard file. The 7 hard file was taken from our storage facility, so. 8 MR. SMITH T: I can represent that they 9 were. This is the hard file. I haven't looked at 10 the exhibits. 11 Excuse me, Forrest. I'm sorry to 12 interrupt you. 13 I have not looked at this entire exhibit, 14 but as we said, as we said in the response to the 15 subpoena, Deutsche 979 through 1068 were obtained 16 from Iron Mountain by subpoena. 17 MR. GARBER: And I appreciate that, but I 18 want to find out what the witness knows. 19 MR. SMITH T: I understand. 20 THE WITNESS: That's my knowledge, if it's 21 the hard file, it was obtained from Iron Mountain 22 storage facility. The law firm did not have 23 possession of the hard file. 24 Q. (BY MR. GARBER) Was the Iron Mountain 25 storage facility the facility that was maintained by</p>

<p>1 David Stern for its old files?</p> <p>2 A. It's a separate storage facility. It's 3 not maintained by the Law Offices of David Stern.</p> <p>4 Q. Who pays for it?</p> <p>5 A. Nobody pays for it. It's -- the law firm 6 can't afford to pay storage fees anymore.</p> <p>7 Q. Was anybody paying for it in 2009?</p> <p>8 A. Yes, the law firm was paying for storage 9 fees back then.</p> <p>10 Q. Who would have had access to that file 11 besides David Stern once it was placed in Iron 12 Mountain?</p> <p>13 A. No one, other than Iron Mountain 14 employees.</p> <p>15 Q. GMAC would not be able to get information 16 out of that?</p> <p>17 A. No. It was our office file. It was not 18 their file.</p> <p>19 Q. Do you have any knowledge of how it came 20 into the possession of GMAC?</p> <p>21 A. Just as was stated before, through a 22 subpoena to Iron Mountain, and Iron Mountain, it's my 23 understanding, produced the hard file.</p> <p>24 Q. To the best of your knowledge, is the 25 original file still in Iron Mountain?</p>	Page 58	<p>1 Q. If you would please turn to Deutsche Bank 2 1061. Okay, this is a document that was prepared by 3 David Stern?</p> <p>4 A. No.</p> <p>5 Q. Who prepared this document?</p> <p>6 A. This was prepared by the title company.</p> <p>7 Q. The title company prepared this?</p> <p>8 A. Yes.</p> <p>9 Q. It says down at the bottom, "Note not 10 available" and the date is 8-8-09.</p> <p>11 A. Okay.</p> <p>12 Q. That would have been the title company 13 that would have put that down?</p> <p>14 A. Yes.</p> <p>15 Q. And again, on the next page, 1062, they 16 put "Note not available"?</p> <p>17 A. Is there a question?</p> <p>18 Q. Yes, that would have been true as of the 19 8th of August, 2009 that the note was not available?</p> <p>20 MR. SMITH T: Object to form. Lack of 21 foundation. Go ahead.</p> <p>22 THE WITNESS: I'm confused. It looks like 23 the title examiner did not have a copy of the note on 24 the date that they did the title exam, which was 25 8-8-09.</p>	Page 60
<p>1 A. I don't know where it is.</p> <p>2 Q. When you were preparing for this 3 deposition, did you review all the documents that are 4 contained in this Exhibit E?</p> <p>5 A. I reviewed them on the computer. A copy 6 was sent by Attorney Smith to me to look at what was 7 produced.</p> <p>8 Q. Were they divided up into two parts, one 9 being this part that represents the hard copies from 10 Iron Mountain?</p> <p>11 A. Yes.</p> <p>12 Q. So you have reviewed all these in 13 preparation for this deposition?</p> <p>14 A. I quickly went through them. Again, I 15 didn't spend much time on any of them. I just looked 16 to see what they were.</p> <p>17 Q. Do you know if there was a problem with 18 the Mack referral when it was received by David 19 Stern?</p> <p>20 A. No, I didn't see anything regarding -- 21 problem in transmission, is that what you mean?</p> <p>22 Q. Some problem with handling the file.</p> <p>23 A. The handling of the file?</p> <p>24 Q. Yes.</p> <p>25 A. No.</p>	Page 59	<p>1 Q. (BY MR. GARBER) And looking at the 2 response to the subpoena that we have, it says that 3 the original note and mortgage and TP -- is that 4 title policy?</p> <p>5 A. Yes.</p> <p>6 Q. (Continuing) -- received on 8-10-2009, 7 correct?</p> <p>8 A. It's reflected received by the law firm. 9 This is the title examination report. Two different 10 entities.</p> <p>11 Q. I see. What was the name of this title 12 company?</p> <p>13 A. Professional Title & Abstract of Florida.</p> <p>14 Q. Who would have sent information to them to 15 prepare that?</p> <p>16 A. The law firm.</p> <p>17 Q. So they were a private contractor used by 18 David Stern to facilitate the foreclosure process?</p> <p>19 A. Yes. And if you look at the comment 20 history, the title search was ordered on the 29th of 21 July which pre-dated the receipt of the note. So 22 what the title company got probably was not 23 reflective of what the law firm had at the time the 24 exam was done.</p> <p>25 Q. The name of this company was Professional</p>	Page 61

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1	Title & Abstract; is that correct?		1 is the response of David Stern to the Counterclaim of
2	A. Yes.		2 GMAC, all of it's true and correct?
3	Q. Do you know where they're located?		3 A. Yes.
4	A. I don't believe that they are doing		4 Q. Did you participate in its preparation?
5	business any longer.		5 A. Not specifically.
6	Q. Where were they located?		6 Q. Did you provide information for it?
7	A. They were located at 900 South Pine Island		7 A. I may have. I don't specifically recall.
8	Road, I believe the fifth floor.		8 Q. Do you know who did provide information
9	Q. Is that the same building the Law Office		9 for it?
10	of David Stern was in?		10 A. I would be guessing. Other than myself,
11	A. Yes.		11 possibly David Stern.
12	Q. Do you know if this was a business that		12 Q. Paragraph number two of the Affirmative
13	was affiliated with David Stern by cross boards of		13 Defenses, that's found on page five of Exhibit D, in
14	directors or ownerships?		14 paragraph number two the Office of David Stern is
15	A. Yes, I do know.		15 saying GMAC is not entitled to relief because it
16	Q. And it was an affiliated company?		16 breached the contract by, among other things, failing
17	A. Yes.		17 to promptly obtain replacement counsel.
18	Q. Do you know when they went out of		18 Do you know if GMAC made attempts to
19	business?		19 promptly obtain replacement counsel with respect to
20	A. No, I don't. It eventually became a		20 the Mack case?
21	public company and I don't know when they stopped		21 A. That was really not relevant because the
22	doing business.		22 case was closed on our system.
23	MR. SMITH T: David, can we take just a		23 Q. So from David Stern's point of view, when
24	short break --		24 they were terminated in November of 2011, David Stern
25	MR. GARBER: Sure.		25 didn't feel that replacement counsel was needed with
	Page 63		Page 65
1	MR. SMITH T: (Continuing) -- when you get		1 respect to the Mack case?
2	to a point?		2 A. That's correct.
3	MR. GARBER: Can I just get to one point?		3 Q. In paragraph number three it says that
4	MR. SMITH T: Yeah.		4 GMAC's claims are barred because of GMAC's own
5	MR. GARBER: On this title note there is a		5 negligence caused all or part of its purported
6	portion that has been redacted on the last, 1065, and		6 damages. Part of those damages are the judgment that
7	Mr. Smith T has objected to that information being		7 they illuded to in their Complaint of \$450,000 in the
8	given. Would you also object to it here today, John?		8 Mack case.
9	MR. SMITH T: Yes. I mean, the Judge has		9 Can you tell us if GMAC was guilty of any
10	already ruled that it is not relevant, has nothing to		10 negligence in that case?
11	do with this case, so I don't understand even why you		11 A. In the Mack case?
12	would seek to revisit it at this time since the Judge		12 Q. Yes.
13	has already seen what's behind that and ruled on		13 MR. TEW: I'm gonna instruct him not to
14	this.		14 answer as to legal conclusion. He's here as a fact
15	MR. GARBER: I understand.		15 witness, not to make a legal conclusion.
16	Okay, we can take a break.		16 Q. (BY MR. GARBER) Did GMAC breach any
17	VIDEOGRAPHER: We're going off video		17 duties in the Mack case?
18	record.		18 MR. TEW: Same instruction.
19	(Thereupon, a brief recess was taken.)		19 Q. (BY MR. GARBER) Did GMAC do anything
20	VIDEOGRAPHER: We're back on video record.		20 wrong in the Mack case?
21	Q. (BY MR. GARBER) Mr. McSurdy, would you		21 MR. TEW: Same instruction. In addition
22	please turn your attention to Exhibit D that we've		22 to everything else, there's nothing in the subpoena
23	already introduced.		23 relating to this and it's calling on the witness to
24	A. Okay.		24 make conclusions of law. He's here as a fact witness
25	Q. As far as you know, this Exhibit D, which		25 to testify about the Mack case in detail but not

<p>1 conclusions as to GMAC's conduct. 2 MR. GARBER: And it is my understanding 3 that the subpoena that was sent out for a corporate 4 representative notifies the corporate representative 5 of those things specifically that he should try to be 6 prepared on, but it does not preclude that other 7 questions can be asked. 8 MR. TEW: I know, but it doesn't turn him 9 into an expert witness who can make a legal 10 conclusion from facts. For one thing, you haven't 11 asked him any hypotheticals. I wouldn't let him 12 answer those anyway, but you're saying, did GMAC do 13 something wrong? Those are all conclusions of fact 14 and law, and he's not here as that type of witness. 15 It's inappropriate to ask him. 16 MR. GARBER: Okay. That might be 17 important to our case. Most things I can let go, but 18 that might be important to the case. 19 MR. TEW: Well, that's for the Judge to 20 decide, not for Forrest. He can't look at the facts 21 and make conclusions. 22 Q. (BY MR. GARBER) With respect to paragraph 23 number nine, David Stern was saying that GMAC's 24 claim should be barred by the doctrine of unclean 25 hands for failure to retain replacement counsel.</p>	<p>Page 66</p> <p>1 A. My review of the file did not indicate 2 that there was any inappropriate endorsement or loan 3 documentation in the file. 4 Q. Was there any problem with GMAC having the 5 note? We saw earlier on the Title Sheet that they 6 did not have the note as of the 8th of August. Was 7 there some problem in getting the note from GMAC? 8 A. I don't believe that it indicated GMAC 9 didn't have the note as of the 8th of August. It 10 indicated our law firm did not have the note until 11 the 8th of August. 12 Q. Right. 13 A. Right. 14 Q. But there was no problem in getting that 15 note from GMAC? 16 A. No. Actually, that was a quick delivery 17 of an original note based on my experience with 18 foreclosure cases. 19 Q. This paragraph cites an order that was 20 entered by the Board of Governors in the Federal 21 Reserve System on April 13, 2011, which identified 22 misconduct on behalf of GMAC. Do you have any 23 knowledge of that order? 24 A. I've never read that order. I've heard of 25 it, but that's the extent of my knowledge.</p>
<p>1 I've already asked you about that with 2 respect to the Mack case, and you said that's not an 3 issue, correct? 4 A. That was not -- replacement counsel was 5 not an issue in either GMAC nor the Law Office of -- 6 to my knowledge, the Law Offices of David Stern did 7 not tell GMAC that replacement counsel was necessary 8 because the file was closed in our system. 9 Q. It goes on to cite -- citing inaccurate 10 affidavits. There were no inaccurate affidavits, 11 were there, that was signed by GMAC on the Mack case? 12 A. I don't know about inaccurate. I didn't 13 see any affidavits in the Mack case at all, so I 14 don't think that would be pertinent. 15 Q. Not confirming whether loan and mortgage 16 documents were properly endorsed. Was that true in 17 the Mack case, that GMAC failed to see if loan and 18 mortgage documents were properly endorsed? 19 A. Could you repeat the question? I don't 20 really understand what you're asking. 21 Q. Okay. I'm asking, with respect to the 22 Mack case, do you know whether or not any loan or 23 mortgage documents that GMAC provided to the office 24 of David Stern were not properly endorsed or assigned 25 or in the possession of the appropriate party?</p>	<p>Page 67</p> <p>1 Q. So would it be fair to say that you also 2 don't have any knowledge of any misconduct by GMAC 3 with respect to the Mack case? 4 A. Yes, I have no knowledge of that. 5 Q. And by saying you have no knowledge, 6 you're not denying misconduct, but you have no 7 knowledge one way or the other? 8 MR. SMITH T: I object to that. The 9 witness can answer the question. 10 Q. (BY MR. GARBER) Is that a fair statement? 11 MR. GARBER: Well, I just want to make 12 sure it's not mischaracterized later on. 13 MR. TEW: Well, his answer is crystal 14 clear, he doesn't know. 15 THE WITNESS: I don't know. 16 MR. GARBER: Okay, I have some other 17 documents that I would like to go over with you, and 18 these are the second half of the Stern file that was 19 provided to us by Deutsche Bank. 20 Can we please have them marked as our next 21 numbered exhibit. 22 (Thereupon, Deutsche 001176 - Deutsche 23 001355 were marked as Defendant's Exhibit 24 G, for Identification.) 25 Q. (BY MR. GARBER) By the way, Mr. McSurdy,</p>

Page 70 1 I note that it's 20 minutes to 1:00. Are you okay 2 to just go through lunch? 3 A. Sure. 4 Q. Okay, thank you. 5 Do you have a copy of Exhibit G in front 6 of you? 7 A. Yes. 8 Q. The first one is a letter from my office 9 to Ms. Shum dated February 2, 2011. Do you see this? 10 A. I do. 11 Q. Did David Stern receive this letter? 12 MR. TEW: You mean the law firm? 13 THE WITNESS: The law firm. 14 MR. GARBER: Right. 15 THE WITNESS: If this was one of the 16 documents that was produced by GMAC, yes. I 17 personally pulled these documents from the system, so 18 if they -- if GMAC produces them, yes, it was 19 received by the law firm. 20 Q. (BY MR. GARBER) So in the second 21 production by Deutsche Bank, based on a production 22 request from my office, all those documents that 23 Deutsche Bank sent to us or GMAC sent to us were 24 ones you pulled from the system, correct? 25 A. Yes, yes.	Page 72 1 its way. The process would have been mail room would 2 have scanned it first into the system, the hard copy 3 of the letter given to her paralegal on this 4 particular file, and then the paralegal would have 5 given that with other documents received that day to 6 Ms. Shum for her review and instructions as to what 7 to do. 8 Q. Now, in this particular case David Stern 9 filed a foreclosure against the Macks in August of 10 2009, correct? 11 A. Yes. 12 Q. And there was a Counterclaim that was 13 filed on this in September of 2009, wasn't there? 14 A. My review of the file indicates that there 15 was a Counterclaim filed, yes. 16 Q. Would it have been the responsibility of 17 David Stern to notify GMAC when they received the 18 Counterclaim? 19 A. Yes. What should have happened was when 20 it came into the mail room, it should have been 21 scanned -- the same process, it should have been 22 scanned by the mail room, and then the hard copy 23 given to the paralegal, the paralegal should have 24 given it to the attorney handling the file, Ms. Shum. 25 She then would have reviewed it. Because it was a
Page 71 1 Q. So I see there's a bar coding down here on 2 the bottom right hand corner of the February 2nd 3 letter. 4 A. Yes. 5 Q. Was that put on there by David Stern's 6 office? 7 A. Yes, that's when the mail room would have 8 processed the letter. 9 Q. So whatever mail comes in, the mail room 10 would get it and put on the bar code? 11 A. Yes. 12 Q. And then what would they do with it? 13 A. Well, what was supposed to happen was it 14 was supposed to be scanned into the system for the 15 particular file. They would look up what the file 16 pertained to and then the hard copy should have been 17 given to the paralegal handling the case and 18 eventually an attorney would review the letter or the 19 pleading. 20 Q. This letter was addressed to Ms. Shum. 21 Was she a lawyer at the Office of David Stern on 22 February 2, 2011? 23 A. Yes. 24 Q. It would not have ordinarily gone to her? 25 A. Yes, it would have. It would have made	Page 73 1 contested pleading, she would have given it to a 2 managing attorney with the file, who would -- the 3 managing attorney would then have assigned it to a 4 litigator in the litigation department and from that 5 point, the litigator would have sent a copy to the 6 client, GMAC in this case, along with a proposed 7 budget how to defend that particular pleading. 8 Q. That's what should have happened -- 9 A. That's what should have happened. 10 Q. (Continuing) -- when the Counterclaim came 11 in? 12 A. Yes, in September of -- 13 Q. 2009? 14 A. (Continuing) -- 2009. I believe it 15 actually wasn't posted to Tracker until October of 16 2009. 17 Q. So the Counterclaim then was posted to 18 Tracker in October of 2009? 19 A. Yes. The mail room was receiving 20 approximately 10,000 pieces of mail a day and they 21 were backlogged. 22 Q. So was it assigned to a litigation 23 attorney? 24 A. No, it never was. 25 Q. Was there any understanding that David

<p>1 Stern had with GMAC that they would only handle the 2 foreclosure case and not handle a Counterclaim that 3 was filed? 4 A. No, there was no such understanding. 5 Q. So it was the duty of David Stern to 6 notify GMAC when they got the Counterclaim? 7 A. That was the normal practice, yes. 8 Q. And that was their duty? 9 A. Yes, that was what was expected of them by 10 GMAC. 11 Q. Was it also the duty of David Stern to 12 have filed an appropriate Answer to the Counterclaim 13 in the suit of foreclosure they brought in the Mack 14 case? 15 A. Not necessarily. It would have depended 16 on the response gotten -- received from GMAC after 17 the copy of the pleading had been sent to them with 18 the proposed budget. 19 Sometimes GMAC or another client would 20 say, "We would prefer another firm to handle the 21 defense of the Counterclaim, please transfer the file 22 to this firm." 23 Q. Would it be fair to say then that when 24 Counterclaims were filed on foreclosure suits, they 25 were handled on a case-by-case basis, depending on</p>	<p>Page 74 1 A. The GMAC team had -- it could have been 2 one of 12. 3 Q. Do you know the names of the people that 4 could have been doing it? 5 A. No, I'm sorry. 6 Q. Is there any record at David Stern of who 7 those people are? 8 A. No longer, no. There's nothing, at least 9 at this point. 10 Q. Now, the Complaint itself was not signed 11 by Ms. Shum. It was signed by Ms. Barnes, do you 12 remember that? 13 A. Yes, I remember that. 14 Q. Would this letter have been given to 15 Ms. Barnes because she was the one that actually 16 signed the Complaint? 17 A. Again, I don't know. I don't know what 18 happened to the letter. From what I could tell, it 19 didn't make it out of the mail room. The tracing of 20 it stopped with the mail being scanned into the 21 system. 22 Q. Was Ms. Shum the individual attorney that 23 was assigned the Mack case? 24 A. Yes. 25 Q. Was it transferred over to Ms. Barnes</p>
<p>1 the wishes of GMAC? 2 A. Yes. 3 Q. Did David Stern submit a budget to GMAC 4 about handling the Counterclaim? 5 A. No. 6 Q. Do you know if this letter of February 2, 7 2011 ever reached Ms. Shum? 8 A. I do not know. I can say what the 9 practice would have been if I could tell if she had 10 received it. What she should have done, our 11 attorneys are instructed to initial and date in the 12 lower corner of the letter if they had ever reviewed 13 the letter or the pleading. 14 Q. And the fact that we don't see an initial 15 and a date in the bottom right hand corner, does that 16 indicate she did not? 17 A. Indicates to me that she did not see the 18 letter. 19 Q. Do you know who the paralegal was that 20 should have handed it to her? 21 A. On this date, no. There was much 22 turnover. 23 Q. How many paralegals did you have 24 approximately that might have been assigned the Mack 25 responses?</p>	<p>Page 75 Page 77 1 because she signed the Complaint? 2 MR. SMITH T: Let me object to the form. 3 I know we looked at the lis pendens which was signed 4 by Ms. Barnes. I'm not sure we saw who signed the 5 Complaint, but go ahead. 6 MR. GARBER: Actually, I don't know 7 either. That's a good question. 8 (BY MR. GARBER) Let's look at Exhibit E 9 and tell me, if you can, who signed it. 10 A. I cannot tell who signed the Complaint. 11 Q. Can you tell me who signed that Complaint, 12 the second page? 13 A. It was not Misty Barnes, I can tell you 14 that. 15 Q. Yeah, that's a good point. 16 What is that first thing, L/H? 17 A. I can't make out anything. A name, I 18 don't recognize a name, they didn't put their Bar 19 number. 20 Q. It has a name of Miriam Mendieta. 21 A. I know Miriam's signature and that's not 22 Miriam's signature. 23 Q. Is there any way we can find out who 24 signed this Complaint? 25 A. Not at this point. I'm sorry.</p>

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1 Q. There are no records that David Stern has
2 that would show that?

3 A. No, we don't have an HR department
4 anymore. We don't have anything.

5 Q. Okay. Going beyond and in Exhibit G, the
6 first entry, Exhibit G was received by David Stern,
7 but as far as you can tell David Stern's office made
8 no action with respect to the February 2nd letter,
9 correct?

10 A. Correct.

11 Q. The next thing we have is a letter to the
12 clerk, it's also dated February 2, 2011, and it has
13 enclosures. Motion to Compel Discovery. Did the
14 Office of David Stern receive a copy of this letter
15 dated February 2, 2011 to the clerk?

16 A. I can -- I can tell you that any documents
17 dated after the last date of the entry on the Tracker
18 comment history, the same -- my testimony would be
19 the same that if nothing is indicated after that
20 date, when the last date of the comment history, then
21 it indicates that nobody did anything with respect to
22 any documents that were received by the mail room.

23 Q. Right, but I just want to make sure that I
24 have an acknowledgment that David Stern did receive a
25 copy of this letter of February 2, 2011.

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1 MR. GARBER: Yeah, I just want to make
2 sure they were all received by them.

3 MR. SMITH T: And I appreciate that. I'm
4 not trying to prevent you from handling your
5 deposition, but I do want just to maybe save some
6 time and state that we have -- there has been
7 submitted in this response to the subpoena the
8 statement that says Defendant's documents labeled
9 Deutsche 1176 through 1355, these records were
10 electronically stored and contained documents that
11 had -- well, the rest of that doesn't matter. But we
12 can say for the record that these are the documents
13 that Mr. McSurdy provided to me, which I then
14 produced in response to your document request.

15 MR. GARBER: Okay. And let me do this
16 since I want his knowledge on here to try and save
17 some time.

18 Q. (BY MR. GARBER) Can you look at the rest
19 of the packet and make sure these are the documents
20 that David Stern had in their possession and
21 provided to Deutsche -- to GMAC.

22 A. Yes, these are all the documents that the
23 law firm received on the Mack file.

24 Q. And do you have any reason to believe that
25 any of these documents, and they're numerous

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1 A. I don't see the stamp on here from the
2 mail room, but I assume that it was also delivered as
3 part of the package that I sent to Mr. Smith, so yes,
4 if that's the case.

5 Q. Okay. It bears the Deutsche Bates stamp
6 of double 01177.

7 A. Okay, then that would have been pulled
8 from our system electronically.

9 Q. So as far as you know, that was received
10 by David Stern?

11 A. Yes.

12 Q. Okay. And then there was a copy of the
13 Motion To Compel Discovery. That was attached to it.
14 And that's also Deutsche Bates stamped. That would
15 have been received as well?

16 A. Yes.

17 Q. And the next thing would be a copy of the
18 request for production of documents that's found at
19 Bates stamp 1180 and 1181 and 1182, correct?

20 A. Yes.

21 Q. And David Stern's office would have
22 received that as well?

23 A. Yes.

24 MR. SMITH T: David, are you intending to
25 go through each one of these?

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1 documents, that have dates on them were not received
2 by the Office of David Stern at or near the date of
3 the document?

4 MR. SMITH T: Object to the form. Let me
5 just say, I'm not preventing him from answering, but
6 again, we have made it known that some of the
7 documents have auto dating coding which change the
8 day when they were printed. So the dates reflected
9 on some of the documents themselves won't reflect the
10 actual date or the contemporaneous receipt or
11 generation of that document.

12 Q. (BY MR. GARBER) Okay. And the question
13 was: Do you have any reason to believe that any of
14 these documents that bear a date on them as to when
15 they were made were not received by the Office of
16 David Stern at or about the time the document was
17 made?

18 MR. SMITH T: Same objection.

19 THE WITNESS: No, I have no reason to
20 believe that they were not received within a
21 reasonable time after the date shown, except in the
22 exception that he stated for auto dating.

23 Q. (BY MR. GARBER) Okay. And just to take
24 an example, the first page of Exhibit G, that's a
25 letter dated February 2, 2011, to the best of your

<p>1 knowledge that was received by the Office of David 2 Stern a few days, within a few days of February 2, 3 2011, correct? 4 A. Sometime between February 2nd and February 5 11th, yes. 6 Q. And February 11th, okay. And how do you 7 know February 11th? 8 A. The mail stamp at the bottom there. 9 Q. I see. Okay. Would you please turn to 10 Deutsche 1205. This is an order setting the Deutsche 11 Bank versus Mack case for a docket sounding and it 12 bears the David Stern bar coding in the top right 13 hand corner. Do you see that? 14 A. Yes. 15 Q. Looks like it has a date of February 17, 16 2011. 17 A. Well, this is a proposed order. 18 Q. Yes, but you're acknowledging that David 19 Stern received this, correct? 20 A. Yes. 21 Q. And would this not have attracted some 22 attention in the mail room that a trial was brewing 23 on this case? 24 A. Would it not have? 25 Q. Yeah.</p>	<p>Page 82</p> <p>1 A. Yes, it should have. What should have 2 happened is the Case Um report should have been 3 updated to indicate that you had made an appearance 4 in the case and the system would have automatically 5 put you in there. 6 Q. Okay. Later on we're going to see some 7 New Trak notes and the New Trak notes indicate that 8 the Office of David Stern confirmed the file was 9 closed on September 3, 2009. 10 Do you know if the file, the Mack file was 11 closed on September 3, 2009? 12 A. I have to look back at the comment 13 history -- 14 Q. Okay. 15 A. (Continuing) -- which is Exhibit F 16 attached to the response to the subpoena. 17 The file was instructed to be closed by 18 GMAC on September 2nd and it was physically closed on 19 October 5, 2009. There was an entry "File clicked 20 closed." 21 Q. Okay. Can you tell by looking at this 22 Exhibit F whether or not GMAC was notified that David 23 Stern's office had closed the file? 24 A. From looking at Exhibit F, no. They would 25 have known -- they would have received back the</p>
<p>1 A. Apparently it did not. 2 Q. Would it be fair to say it should have? 3 A. It should have been delivered to the 4 paralegal and paralegal should have given it to the 5 attorney handling the file. 6 Q. Would you please turn to Deutsche Bates 7 stamp double 01239 and 1240. Would you tell us what 8 1239 is. 9 A. It is a copy of the Notice of Voluntary 10 Dismissal filed by the Law Offices of David Stern in 11 the Mack case, and it looks like it was filed on 12 December 8, 2009. 13 Q. And who was -- who signed this Notice of 14 Voluntary Dismissal? 15 A. It looks like Melissa Moros. 16 Q. Okay. Was it the practice of David Stern 17 to give a service list of everybody they give a copy 18 to? 19 A. Yes. 20 Q. Any reason to believe that David Stern 21 sent a copy of this Notice of Voluntary Dismissal to 22 the Macks' attorney, who was me, David Garber? 23 A. No. It looks like it went to the Macks. 24 Q. Should it have gone to the Macks' 25 attorney?</p>	<p>Page 83</p> <p>1 original note and mortgage. There was a note there 2 on November 17, 2009 which is standard practice after 3 a file is closed to send back the original documents 4 to the client. So that would have been their 5 indication the file was closed. 6 Q. So based on Exhibit F, you believe that 7 David Stern closed the file on October 5, 2009? 8 A. That's what is indicated, yes. 9 MR. SMITH T: Object to form. 10 Q. (BY MR. GARBER) Okay. Now, this 11 particular Notice of Voluntary Dismissal that we see 12 in Deutsche Bank 1239 was signed on December 2, 13 2009, correct? 14 A. Correct. 15 Q. Why would this have been generated if the 16 file had been closed in October? 17 A. It was not a correct procedure. The file 18 should not have been closed until the dismissal was 19 filed. 20 Q. How did it come to be the file that was 21 closed and off the radar would suddenly be revived to 22 have work done on it? 23 A. Are you asking me to speculate what 24 happened? 25 Q. I'm asking if you know.</p>

<p>1 A. From the file I can't tell what caused the 2 dismissal to be filed. In the normal course of the 3 practice of the firm, dismissals at that time were 4 being filed within six to nine months after a file 5 was closed. 6 Once the file was clicked closed, it would 7 be delivered to the dismissal department, and then we 8 had so many files that had to be dismissed at one 9 time in 2009 that it took six months to nine months 10 for that department to generate dismissals and get 11 them filed. 12 However, if during that period when the 13 file was closed but the physical file was in the 14 dismissal department to be dismissed, if an attorney 15 or a party needed a dismissal filed in order to sell 16 a piece of property or whatever reason they needed to 17 release the lis pendens, it would be pushed to the 18 head of the pile of dismissals. 19 Q. Now, David Stern maintained an actual 20 paper file for a portion of the Mack case, correct? 21 A. Yes. 22 Q. When it was closed, as indicated on 23 October 5, 2009, would that paper file go somewhere? 24 A. It would go -- in this case it would have 25 gone to the dismissal department to file the</p>	<p>Page 86 1 person that made this entry? 2 A. Yes. 3 Q. Okay. She sent a voluntary dismissal to 4 the court on 12-7-2009? 5 A. Right. 6 Q. Why did she make that notation a year 7 later or almost a year later? 8 A. They were very backed up in what they had 9 to do. That's what I was saying to you, six to nine 10 months. That's almost -- that's 10 months later she 11 updated the system as to what had been done. 12 Q. What would prompt her to update the system 13 after nine months after it had been closed? 14 A. I have no idea. It drove us crazy. I 15 don't know. We were constantly after them to do 16 better, and obviously in this case they didn't do 17 better. 18 VIDEOGRAPHER: Excuse me for interrupting, 19 but we have a tape change in five minutes. 20 Q. (BY MR. GARBER) Okay. The first entry 21 that's on this page 1364 is a Jennifer Bragonier. 22 That's an employee of David Stern? 23 A. She was, yes. 24 Q. And on 9-22 it says "Updated without 25 file." What does that mean?</p>
<p>1 dismissal. 2 Q. Okay. So they would keep it there semi 3 active until they got the dismissal filed? 4 A. Correct. If you look at the comment 5 history -- oh, I take that back. It looks like the 6 file was sent to storage before it went to the 7 dismissal department, which is not -- that's not the 8 normal case. It should not have been sent to storage 9 until the dismissal was filed. 10 Q. Okay. So I see what you're looking at, on 11 9-22 "File to storage." 12 A. Yes. 13 Q. Is that what you're looking at? 14 A. Yes. 15 Q. And I see the dates are out of order 16 because they start at 9-15, they go up to 11-17 and 17 12-7 and then they go back to 9-22. Do you know why 18 that's out of chronological order? 19 A. No, I don't know why the system recorded 20 it that way. Oh, oh, it's by year. Look at the 21 year. It's not out of chronological order. 22 Q. Oh, I see. Okay. 23 Well, let's look at the entry on Deutsche 24 Bank 1364, that's the third one down from the top, 25 and it says Heather Smith on 9-22-2010. That's the</p>	<p>Page 87 Page 89 1 A. It means the file, as you see there, was 2 sent to storage it looks like the same day she 3 updated it but she didn't have the file. She went 4 into the computer system without the file in front of 5 her. 6 Q. And she updated the file? 7 A. Updated without file, but it doesn't look 8 like she said anything. She just updated without 9 file. 10 Q. How would she update it? 11 A. She also put comments lower there, "File 12 to storage, order recorded and scanned 9/22." 13 Q. What order would she have been waiting? 14 A. The dismissal order. 15 Q. Where would there be a dismissal order? 16 A. The voluntary dismissal back from the 17 Court. She called it an order. It really 18 technically wasn't an order. It might have been in a 19 stack of papers that she had had there for six months 20 that she finally got to import in the system. That's 21 how far back they were. 22 Q. It says under this first entry by Jennifer 23 Bragonier on page 1364, it says, "Historical comments 24 (Secondary)." What does secondary mean? 25 A. I don't know the distinction in the</p>

<p>1 computer software system there.</p> <p>2 Q. If you'd be so kind as to turn to page</p> <p>3 1240 of Exhibit Number G. That's the secondary</p> <p>4 production of materials from the Office of David</p> <p>5 Stern.</p> <p>6 A. Yes.</p> <p>7 Q. This is a document dated December 2, 2009?</p> <p>8 A. Yes.</p> <p>9 Q. And did it also go out with a Notice of</p> <p>10 Voluntary Dismissal?</p> <p>11 A. It appears to have been filed at the same</p> <p>12 time as the dismissal.</p> <p>13 Q. Do you recognize the name of the attorney?</p> <p>14 A. No, but the signature looks the same as</p> <p>15 the -- almost the same as the person who signed the</p> <p>16 Notice of Dismissal.</p> <p>17 Q. Okay. And the first one, can you read</p> <p>18 that. Is that Melissa Moros?</p> <p>19 A. It looks like Moros. I'm not familiar</p> <p>20 with her last name.</p> <p>21 Q. But you do know a Melissa who was an</p> <p>22 attorney then?</p> <p>23 A. I'm not familiar with her, no. Again, we</p> <p>24 had at that point 135 attorneys, or maybe even more</p> <p>25 at that point.</p>	Page 90	<p>1 received this Counterclaim on or about the date that</p> <p>2 it was sent, which would have been 9 September, 2009,</p> <p>3 correct?</p> <p>4 A. I can't attest to that because when I</p> <p>5 pulled them from the system, it didn't say the date</p> <p>6 of receipt and there was no mail stamp on this one,</p> <p>7 but it was at some point received by the law firm.</p> <p>8 Q. Okay. You have no reason to doubt that it</p> <p>9 was received about that time?</p> <p>10 A. Sometime after that date, yes.</p> <p>11 Q. Okay.</p> <p>12 MR. GARBER: Are we at the tape change</p> <p>13 portion? Do you want to do that now? We'll take a</p> <p>14 short break and I'll review my documents here.</p> <p>15 VIDEOGRAPHER: Time is 1:06 p.m. End of</p> <p>16 tape number one.</p> <p>17 (Thereupon, a brief recess was taken.)</p> <p>18 VIDEOGRAPHER: Time is approximately 1:15.</p> <p>19 This is tape two of the videotaped deposition of</p> <p>20 Forrest G. McSurdy, Esquire.</p> <p>21 MR. GARBER: Mr. McSurdy, I'm going to</p> <p>22 hand you a document that has previously been used in</p> <p>23 discovery and we've been calling it Exhibit 2 because</p> <p>24 it was the second exhibit to Mr. Gary's deposition.</p> <p>25 He was an employee of GMAC. I'd like to retain the</p>	Page 92
<p>1 Q. Well, her Bar number is legible, so I</p> <p>2 guess we can look up who she is.</p> <p>3 A. Right.</p> <p>4 Q. She signed this "Prevailing Party." Does</p> <p>5 she believe -- I mean, would that indicate that she</p> <p>6 believes she was the prevailing party?</p> <p>7 MR. SMITH T: Object to form.</p> <p>8 THE WITNESS: It's a form. It's a</p> <p>9 mergible form.</p> <p>10 Q. (BY MR. GARBER) So she wasn't required to</p> <p>11 check and see if they were or were not the</p> <p>12 prevailing party?</p> <p>13 A. Well, if I were signing it, I would not</p> <p>14 sign "Prevailing Party" if I were not the -- if the</p> <p>15 plaintiff were not the prevailing party, but she just</p> <p>16 signed it, it appears.</p> <p>17 Q. And I know this is somewhat redundant, but</p> <p>18 the next pages that we have is 1241 through 1245. Do</p> <p>19 you see them?</p> <p>20 A. Yes.</p> <p>21 Q. Those are the Answers and the Counterclaim</p> <p>22 that was filed in this case, right?</p> <p>23 A. That appears to be the case, yes.</p> <p>24 Q. And by including them in this stack of</p> <p>25 documents, David Stern is acknowledging that they</p>	Page 91	<p>1 Exhibit 2 on this so that we can correspond with the</p> <p>2 other deposition.</p> <p>3 So if the court reporter would please mark</p> <p>4 this one as Exhibit 2.</p> <p>5 (Thereupon, New Trak notes history was</p> <p>6 marked as Defendant's Exhibit No. 2, for</p> <p>7 Identification.)</p> <p>8 Q. (BY MR. GARBER) This is a history of the</p> <p>9 New Trak notes that were given to us by Deutsche</p> <p>10 Bank, and it has been represented to be all of the</p> <p>11 notes having to do that were put on New Trak by</p> <p>12 either David Stern or by GMAC, and I would like, if</p> <p>13 you would be so kind, as to compare this Exhibit 2</p> <p>14 with your Exhibit F here today.</p> <p>15 Turning to page 1364 of Exhibit F, I see</p> <p>16 that there is three -- five entries on 9-22 at the</p> <p>17 top, 9-22-2010. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. None of those entries are made on this</p> <p>20 Exhibit 2 to Mr. Gary's deposition, that is the New</p> <p>21 Trak notes provided by Deutsche Bank. Do you know if</p> <p>22 those entries on your Exhibit F were New Trak</p> <p>23 entries?</p> <p>24 A. No, they were not.</p> <p>25 Q. Okay. Was it the duty of David Stern to</p>	Page 93

<p>1 make annotations in the New Trak system every time 2 they touched the file or did something with the Mack 3 file? 4 A. Not once the file was closed. Again, this 5 was just the administerial act of dismissing the 6 case, these five entries represented on the history. 7 Q. Okay. When was the Mack case closed? 8 MR. SMITH T: Object to form, asked and 9 answered. 10 THE WITNESS: On our system it was clicked 11 closed on October 5, 2009. 12 Q. (BY MR. GARBER) Okay, but as a matter of 13 fact, you kept working on it after that date? 14 A. After that date it looked like the 15 dismissal occurred and the return of the original 16 documents to the client, yes, there was some work 17 done on the file. 18 Q. Would it have been David Stern's duty to 19 put on the New Trak system that they closed the file 20 on October 5, 2009? 21 A. I don't -- I don't understand the word "duty." In what sense? 22 Q. Well, the contract that we looked at today 23 that was Exhibit A to the deposition says that any 24 time you doing something, you should put it in New</p>	<p>Page 94 1 system. I don't know if you could edit as you can 2 with an e-mail, pull it back after you've done it. I 3 don't know. 4 Q. GMAC could make entries on that system? 5 A. Yes, they could. 6 Q. Anybody else that could make entries on 7 that system? 8 A. Well, many clients use that system, but 9 every client had different account. 10 Q. Do you know who maintains the system? 11 A. No, I'm sorry, I don't know the 12 particulars of that. 13 Q. Is it some sort of computer program that's 14 maintained by a third party? 15 A. I believe so, yes. 16 Q. And by "third party," I mean not GMAC and 17 not David Stern. 18 A. Yes, I believe both of them pay a user 19 fee. 20 Q. Okay. Now, I note that on 9-15 on the New 21 Trak notes, Exhibit 2, there is an entry from David 22 Stern's office, it's entry number three, that says 23 that they were awaiting docs from doc team as of the 24 15th of September, 2009. Do you see that? 25 A. I do.</p>
<p>1 Trak. 2 MR. SMITH T: Object to the form. 3 Document speaks for itself. Go ahead. 4 Q. (BY MR. GARBER) So would it have been the 5 duty of David Stern to make an entry every time they 6 did something with the Mack case? 7 MR. SMITH T: Same objection. 8 THE WITNESS: I don't know if it would 9 have been a duty. Apparently it was not the practice 10 for that to occur once the file was closed. 11 Q. (BY MR. GARBER) Okay. So is it fair to 12 say that David Stern did not follow the practice of 13 making an entry into New Trak every time they did 14 something on the Mack case? 15 A. That appears to be the case, yes. 16 Q. Now, New Trak is a system that is 17 maintained by GMAC, correct? 18 A. I don't believe it's maintained by GMAC. 19 I believe they use it. 20 Q. David Stern could make entries on that 21 system? 22 A. Yes. 23 Q. If David Stern made an entry, could they 24 then change that entry after they made it? 25 A. I'm not familiar with the mechanics of the</p>	<p>Page 95 Page 97 1 Q. And I see a corresponding entry by a John 2 Metz on 9-15-2009 that says, "Awaiting docs from doc 3 team." Do you see that? 4 MR. SMITH T: Which entry is that? 5 MR. GARBER: That's the third from the 6 bottom on the 1364. 7 MR. SMITH T: Oh, I beg your pardon. 8 You're back on that. 9 THE WITNESS: That's why I'm not following 10 either. 11 Q. (BY MR. GARBER) I was looking at 12 Exhibit -- 13 A. I follow what you're saying now. 14 Q. (Continuing) -- F. And we have an entry 15 from 9-15 by John Metz, "Awaiting docs from doc team" 16 and an entry on Exhibit 2 saying, "Awaiting docs from 17 doc team." 18 A. Yes, I see that, both entries, uh-huh. 19 Q. Are they the same entry, just recorded in 20 two different places? 21 A. They're slightly different. 22 Q. Okay. Why would they be different? 23 A. Because they don't say the same thing. 24 Q. Right, but wouldn't this be what was 25 inputted in the system?</p>

1 A. In which system? 2 Q. Well, when they put it in the New Trak 3 system, wouldn't it automatically go over here? 4 A. Oh, no, no. You physically had to go to a 5 different part of the computer to enter New Trak and 6 to enter Tracker. 7 Q. I see. So Exhibit F may or may not 8 correspond with New Trak entries? 9 A. Correct. I can -- for example, I can 10 enter on comment history but I cannot enter New Trak. 11 Q. Okay. Looking up to an entry that was 12 made about the sixth from the bottom on Exhibit F by 13 Christina Pareja -- is that how you pronounce her 14 name? 15 A. Pareja, uh-huh, yes, I see it. 16 Q. It says, "Returned docs via UPS tracking 17 number." Would Ms. Pareja also put that into New 18 Trak? 19 A. Not necessarily. 20 Q. Wouldn't it be important that when 21 documents like originals of notes and so forth are 22 returned that the UPS tracking number be given to 23 GMAC? 24 A. Not necessarily. If they needed it -- if 25 for some reason the original note and mortgage did	Page 98 1 that the file was reinstated? 2 MR. SMITH T: Object to form. 3 THE WITNESS: I don't know how it could be 4 reinterpreted (sic). She may have looked at the New 5 Trak comment from 9-2-09 and simply written in the 6 same -- the reason it was closed is reinstated. 7 That's what GMAC inputted. 8 Q. (BY MR. GARBER) On the New Trak notes, if 9 you would be so kind, that's the Exhibit 2 that 10 we've just introduced, and turn to page 913, there 11 is an entry number 48 and it's entered by Nette 12 Diaz. Was she an employee of David Stern? 13 A. Yes. 14 Q. And it says --- 15 MR. SMITH T: David, not to quarrel, but I 16 think we decided that the number above the entry is 17 the corresponding number. Do you follow me? 18 MR. GARBER: Yeah. Isn't that what I 19 said? 20 MR. SMITH T: I thought you said 49. I'm 21 sorry. Go ahead. 22 MR. GARBER: Yes, I think we decided it 23 was the one above. 24 Q. (BY MR. GARBER) Okay. 48 is a note by 25 Nette Diaz. That's an employee of David Stern?
Page 99 1 not get back to GMAC, they would communicate with the 2 law firm and ask for the tracking number. 3 Q. Okay. Later on, maybe two entries up, 4 Christina Pareja also made another entry on the 17th 5 of November on Exhibit F. It says, "File closed per 6 client - 9/2/2009." Does that mean the file was 7 closed on 9-2-2009? 8 A. I think she's referring to the 9-2-2009 9 New Trak comment. 10 Q. Oh, okay. That you were --- 11 A. Instructed to close the file. 12 Q. And then she has the word "reinstated." 13 Do you know what that means? 14 A. Yes, I know what "reinstated" means. 15 Q. What does it mean in this context? 16 A. In this context? 17 Q. Yes. 18 A. In particular with respect to the Mack 19 case? 20 Q. Yeah. 21 A. It means that the loan was current. 22 Q. Okay. So the loan was reinstated? 23 A. That was what I believe she mimicked from 24 the New Trak. 25 Q. Okay. So this could also be interpreted	Page 101 1 A. Yes. 2 Q. But it doesn't appear on this Exhibit F, 3 correct? 4 A. What doesn't appear? 5 Q. The note of 7-28-2009 does not appear on 6 your Exhibit F. 7 A. Well, it says the file was received 8 7/24/09. First entry, "File received 7/24/09." 9 Q. Maybe I'm not looking at the right thing. 10 That's on Exhibit F you're looking at? 11 A. Yes, the first entry there, you see it's 12 dated 7-29-09? 13 Q. 7-24-09 file received. Oh, I see an entry 14 "Created/Mod Date." What is that "Created/Mod Date"?15 A. I don't know where you're looking. 16 Q. Well, looking at Exhibit F, there's the 17 second column over and it has a date. 18 A. Oh, that's the date of the entry. 19 Q. The date of the entry? 20 A. Yes. 21 Q. So with looking at the last entry on page 22 1366, Glen Lewin made an entry on 7-29 telling the 23 system that he had received the file on 7-24, 24 correct? 25 A. Yes.

Page 102 1 Q. Okay. There was no mention of the New 2 Trak upload on 7-28. 3 MR. SMITH T: Object to form. 4 THE WITNESS: Why would there be? 5 Q. (BY MR. GARBER) Well, wouldn't this 6 document, Exhibit F, be a listing of all the 7 contacts that you had with David Stern regarding the 8 Mack case? 9 MR. SMITH T: Object to form. 10 THE WITNESS: No. 11 Q. (BY MR. GARBER) Well, what is this? 12 A. This is a Tracker system. This is when 13 someone handles the file, they were supposed to put 14 in comments as to why they had the file in order for 15 us to locate the file if we ever needed the file. 16 This is our internal tracking system. 17 Q. I see. So there may be other 18 communications other than our Complaint contained in 19 Exhibit F that Stern had with GMAC about the Mack 20 case? 21 MR. SMITH T: Object to form. 22 THE WITNESS: Other than reflected in the 23 New Trak? 24 Q. (BY MR. GARBER) Other than as reflected 25 in Exhibit F.	Page 104 1 Q. (BY MR. GARBER) Oh, okay. Well, we were 2 talking about phone calls and you said you believed 3 there were some phone calls. 4 A. From -- for example, if you look at 5 Exhibit F -- 6 Q. Right. 7 A. (Continuing) -- Deutsche 1365. 8 Q. Let me get to 1365. Okay. 9 A. Entry dated 8/25/09 by C. Erhmann. 10 Q. Yes. 11 A. He says "Account current." 12 Q. Yes. 13 A. He didn't just pull that out of the air. 14 He's a law firm employee. He must have spoken with 15 someone, so I'm assuming that that reflects a 16 communication with GMAC. Do you see what I'm saying? 17 Q. Yeah. 18 A. That's why I'm saying this reflects 19 possible communications. 20 Q. Okay. So let me go over to the New Trak 21 notes to see if there is an entry for corresponding 22 day 25. 23 A. I would be surprised if there were. 24 Q. Why? 25 A. It didn't happen that quickly. I think
Page 103 1 MR. SMITH T: Object to form. 2 THE WITNESS: If the person didn't update 3 Tracker as to why they had the file, yes, there could 4 have been. 5 Q. (BY MR. GARBER) Okay. So just to make 6 sure I'm clear, Exhibit F is not intended as a 7 complete summary of all the communications that 8 David Stern's office had with GMAC about the Mack 9 case, is it? 10 A. No. Remember I testified there's also -- 11 there would have been a sheet where handwritten notes 12 would have been written in. 13 Q. Right. 14 A. That possibly would have reflected 15 communications also. 16 Q. Which would have been in addition to all 17 these entries? 18 A. Yes. 19 Q. Okay. But you didn't find any of those? 20 A. I didn't see that, no. 21 Q. But I believe when you were testifying 22 about that, you said something led you to believe 23 there were such notes at one time. 24 MR. SMITH T: Object to form. 25 THE WITNESS: No, I never saw any notes.	Page 105 1 your next entry would have been the 9-2 where GMAC 2 said, "Reinstated Close File." And also that was 3 around Labor Day. 4 Q. Okay. So, you believe that on or about 5 the 25th of August Mr. -- what was his name again, 6 Erhmann? 7 A. Yes. 8 Q. (Continuing) -- Erhmann called GMAC --- 9 A. Or he might have received a call from 10 them. I don't know. It's not reflected. All he 11 entered was "Account current." 12 Q. Okay. But it would have been on or about 13 August 25th? 14 A. Right. So if you look on the 24th of 15 August, there are several entries here by GMAC. For 16 example, entry number 15, it says, "User has closed 17 the file. Reason: Open in error." 18 So maybe on the 24th someone called our 19 office and said, "The account's current, close the 20 file," but it wasn't reflected that the file was to 21 be closed until 9-2. 22 Q. Okay. And this is something that you 23 don't have any knowledge about, but you're trying to 24 come up with a reason? 25 A. Piece it together, right, that's all I can

	Page 106		Page 108
1	do.	1	Identification.)
2	Q. So an entry that would have been made on	2	Q. (BY MR. GARBER) Please take a minute and
3	Exhibit F might not correspond in date with the one	3	look at them.
4	on New Trak?	4	A. Okay.
5	A. Correct.	5	Q. Have you ever seen those --
6	Q. Would New Trak have all the	6	A. Yes.
7	communications, telephone and otherwise, that were	7	Q. (Continuing) -- e-mails before?
8	made between David Stern and GMAC?	8	And by the way, what is the Deutsche Bates
9	MR. SMITH T: Object to form, asked and	9	stamp on them?
10	answered.	10	A. 1344 and 1345.
11	THE WITNESS: I don't know. It would	11	Q. Let's take the first one, which is 1344.
12	depend on whether every employee of GMAC imported New	12	Was that e-mail written by an employee of David
13	Trak and whether every employee by ours did.	13	Stern?
14	Not every employee in our firm had access	14	A. Yes.
15	to New Trak, so I doubt that that would be a complete	15	Q. And what's the name of that employee?
16	compilation of communications.	16	A. Ann Escobar.
17	Q. (BY MR. GARBER) Okay. And still they	17	Q. And she wrote it to other employees of
18	would be talking with GMAC if they did not have	18	David Stern?
19	access to New Trak?	19	A. I'm not familiar with the name from the
20	A. I believe so. If you compare the names	20	content of the e-mail. It looks like she wrote them
21	that are in our comment history, they're probably not	21	to GMAC.
22	all listed in New Trak.	22	Q. And I don't have my copy in front of me.
23	Q. Okay. Okay, just to make sure that was	23	Can I look at it?
24	with respect to the Mack case because that's what I'm	24	A. Sure.
25	here for.	25	Q. You don't know who Linda Cronrath is?
	Page 107		Page 109
1	A. Yes, exactly.	1	A. No, I don't.
2	Q. Thank you.	2	Q. Please provide judgment figures good
3	Mr. McSurdy, I have some other documents.	3	through 9/24 with a breakdown.
4	These are ones that I don't have copies of, but	4	A. Yes.
5	they're Deutsche Bates stamp 1344 and 1345.	5	Q. Would that e-mail have shown up as an
6	MR. GARBER: Do you have copies of those,	6	entry on New Trak?
7	John?	7	A. I don't know. If I look, I could tell.
8	MR. SMITH T: Can you show them to me.	8	Q. Okay. Should it have shown up as an entry
9	MR. GARBER: Yeah.	9	on New Trak?
10	MR. SMITH T: I'll see what I may be able	10	MR. SMITH T: Object to form.
11	to dig out of my little pile of stuff. Yeah. Now,	11	THE WITNESS: Not necessarily.
12	those are in -- I think those are in the electronic	12	Q. (BY MR. GARBER) Okay. And you can look.
13	records, aren't they?	13	I don't remember that I saw it.
14	MR. GARBER: I believe they came from the	14	A. 25th of ---
15	electronic records.	15	Q. When is it?
16	MR. SMITH T: Yeah, so that's part of	16	A. 25th of August it was sent at 3:36 a.m.
17	Exhibit G.	17	That doesn't make any sense. On the 25th of August
18	MR. GARBER: I am going to hand you two	18	there was someone who entered a comment, it's comment
19	e-mails that I have from 1344 and 1345 on the	19	number 13 on New Trak, "Await figures."
20	Deutsche Bates stamp, and if we can have them marked	20	Q. Yes.
21	as a composite exhibit which will be the next letter	21	A. So that might have been Ann saying that
22	to this deposition.	22	she had requested figures.
23	(Thereupon, Two pages e-mails dated	23	Q. Okay. Now, what is the name of that
24	August 25, 2009 and August 18, 2010 were	24	e-mail?
25	marked as Defendant's Exhibit H, for	25	A. It says it was sent at 3:36 a.m.

<p>1 Q. Did people work at David Stern at 3:36 2 a.m.? 3 A. No, no, they didn't. 4 Q. Would those times be incorrect? 5 A. It might have been sent by the computer at 6 3:36 a.m. Sometimes our computer would send later 7 than what -- when the person -- it didn't go out of 8 the system until that time. 9 Q. Okay. I know I used to have a VCR and it 10 always said it was 12 o'clock. Would these times 11 sometimes be in error? 12 A. Only to the extent that if they weren't 13 sent out of the system, our system at like the time 14 that the person actually pushed the send button, it 15 may have been delayed a few hours. 16 Q. Okay. You have a second e-mail there. 17 May I see that? It's a second part of the composite 18 exhibit. And this is one from Evan Kohn. Was he an 19 employee of David Stern? 20 A. Yes. 21 Q. And it was sent to Vegina? 22 A. Well, I take that back. He was not an 23 employee of the law firm. He was an employee of -- 24 at that point the law firm and the -- the law firm 25 had split into law firm and processing. He was a</p>	<p>Page 110 1 there, a number? 2 A. By a scan reference. I can't tell just by 3 looking at the scan reference. She must have -- he 4 must have -- Evan must have scanned it and that was 5 the code number that was --- 6 Q. Okay. Can I see, see if we can --- 7 A. It's a PDF. 8 Q. It says that it's orders 081610. Is that 9 the date? 10 A. Yes, that's the date, and then following 11 that would be the PDF number from the scan document. 12 Q. Okay. Now, Exhibit G contains all of the 13 documents that were not produced in the first 14 production from David Stern, that is, they didn't 15 come from Iron Mountain. They came from the 16 electronic scanning system of David Stern, correct? 17 A. Yes. 18 Q. Okay. Let's see if we can find those 19 documents that are referred to in here. And I think 20 we're going to see that they are orders having to do 21 with the scheduling of the trial, so they'd be around 22 August of 2010. 23 A. I see an order dated August 2, 2010, Order 24 of Referral To General Magistrate. 25 Q. Okay. And what's your Deutsche Bates</p>
<p>Page 111 1 member of the processing company, the public company, 2 in 2010. You see that was 2010? 3 Q. Okay. So he was not a member of the David 4 Stern law firm? Was that a subsidiary of David 5 Stern? 6 A. No, it was a subsidiary of a public 7 company. 8 Q. Any relationship from David Stern to that 9 subsidiary or to that company? 10 A. David Stern owned some stock in the public 11 company. 12 Q. Okay. 13 A. And for awhile he was the CEO. 14 Q. Okay. So this is the law firm from Evan 15 Kohn to, it looks like Vegina Hawkins, with a copy to 16 Elizabeth Davila; is that correct? 17 A. Yes. 18 Q. And who are Hawkins and Davila? 19 A. Hawkins was an associate foreclosure 20 attorney with the law firm, and Elizabeth Davila was 21 a paralegal with the processing company. 22 Q. Okay. And there was an attachment with 23 that e-mail? 24 A. It references orders, yes. 25 Q. Orders that are designated or coded on</p>	<p>Page 113 1 stamp on it? 2 A. 1346. So it does follow directly the 3 e-mail, 1345. 4 Q. And do you think that 1346 and 1347 is a 5 copy of the order that was sent in that e-mail? 6 A. I believe that is correct. 7 Q. Can you identify any other documents other 8 than Deutsche 1346 and 1347 that was sent in that 9 e-mail? 10 A. It looks like a copy of the envelope to 11 Elsa Shum. 12 Q. Okay. So those three things? 13 A. Yes. 14 Q. Why would it say "Orders," with a plural, 15 of 8-16-10? Does that mean there was more than one 16 order? 17 MR. SMITH T: Object to form, calls for 18 speculation. Go ahead. 19 THE WITNESS: It's been my experience that 20 even though only one order would be attached, that 21 that was the system's way of letting you know -- IT 22 broke the categorization down into orders, pleadings, 23 whatever it was, and the person that scanned it fit 24 it into that category that most likely fit that 25 attachment.</p>

Page 114		Page 116
1	Q. (BY MR. GARBER) Okay. Now, Evan Kohn has	1 MR. GARBER: Yeah, I mean the law firm.
2	a note here that says, "Please see attached." Is he	2 THE WITNESS: The order referring the case
3	asking for Ms. Hawkins to do something on this?	3 to ---
4	MR. SMITH T: Object to form, calls for	4 Q. (BY MR. GARBER) Case management, yes.
5	speculation. Go ahead.	5 A. Yes, I believe that it's appropriate for
6	THE WITNESS: He was an assistant,	6 when the firm gets that sort of an order that it
7	administrative assistant helping to disburse	7 should have sent it on to the client.
8	pleadings and correspondence to attorneys and	8 Q. (BY MR. GARBER) Would that have been in
9	paralegals.	9 New Trak where it would appear?
10	Q. (BY MR. GARBER) And this e-mail was sent	10 A. If it had been sent, yes, it would have
11	out on or about August 18, 2010, correct?	11 been sent to New Trak or our comment history, one or
12	A. Correct.	12 the other.
13	Q. So that would have been long after the	13 Q. Now, the New Trak documents that I have,
14	file had been closed by David Stern?	14 the Exhibit 2, they actually only go up to 9-22-2009;
15	A. Yes. He was doing the correct thing.	15 have you noticed that?
16	This was what should have been happening all along,	16 A. Yes.
17	except he didn't send it to the right person.	17 Q. So these New Trak documents, if they were
18	Q. How did he know to send it to Ms. Hawkins?	18 only covering up to that period of time, they
19	A. I looked at the file. I couldn't tell why	19 wouldn't have covered the time of this e-mail, would
20	he sent it to her. He should have sent it to Elsa	20 they?
21	Shum.	21 A. Right.
22	Q. Why would he send a copy to Elizabeth	22 Q. Have you been able to review New Trak to
23	Davila?	23 see what's in there?
24	A. She was the attorney who was assigned to	24 MR. SMITH T: Object to form.
25	the file.	25 THE WITNESS: Other than the document you
Page 115		Page 117
1	Q. Oh, she was an attorney, too?	1 gave me?
2	A. Not an attorney. The paralegal, I'm	2 Q. (BY MR. GARBER) Yeah.
3	sorry. Elsa was the attorney.	3 A. No, we don't have access to New Trak any
4	Q. Okay. And Vegina Hawkins was -- or	4 longer.
5	Vegina, whatever her name is ---	5 Q. Okay. We took the deposition of an
6	A. It's Vegina. It's Hispanic.	6 individual who was an employee of GMAC and his name
7	Q. Vegina. She is an attorney?	7 was Mr. Bennett. We took it on or about March 13,
8	A. Yes, she was an attorney with the firm.	8 2012, and he was asked about what programs existed to
9	Q. As far as you know, did she have any	9 communicate between GMAC and David Stern, and I have
10	responsibility for this Mack case?	10 a copy of a portion of that.
11	A. No, I saw no indication she was	11 On page 21 this question was asked, "And
12	responsible at all for it.	12 if there was any other communication, you wouldn't
13	Q. Ms. Davila, was she a paralegal that was	13 know anything about it?
14	assigned to it?	14 Object to form.
15	A. I believe -- I read the deposition of Elsa	15 Answer: It's our business practice to --
16	Shum, and I believe that she said she was working on	16 if there ever is another form of communication with
17	the file with her.	17 an outside counsel or our homeowners, that it still
18	Q. Okay. You have no idea what happened	18 gets put in our daily system unless it's privileged,
19	after Mr. Kohn sent this e-mail to these folks, do	19 and it gets put into our litigation software. And
20	you?	20 it's -- I have not reviewed any records like that."
21	A. No.	21 Do you know if there was any privileged
22	Q. Was this the type of thing that David	22 litigation software that was involved with respect to
23	Stern should have notified GMAC about?	23 the Mack case?
24	MR. TEW: The law firm when you say "David	24 A. No, I do not know.
25	Stern"?	25 Q. Okay. Do you know anything about the

<p>1 privileged litigation software he referred to?</p> <p>2 A. No, not with respect to the law firm's.</p> <p>3 Q. With respect to David Stern?</p> <p>4 A. Right, we had no -- we had no dealings</p> <p>5 with any sort of privileged litigation software.</p> <p>6 Q. Okay. On any case?</p> <p>7 A. Not to my knowledge, no.</p> <p>8 Q. Okay. So you don't know what the name of</p> <p>9 that litigation software is?</p> <p>10 A. No. It sounds like it's internal for</p> <p>11 GMAC.</p> <p>12 MR. GARBER: Okay. Okay. Let me take a</p> <p>13 few minutes. We'll take a short break, I'll go over</p> <p>14 my notes, and hopefully we can wind up and maybe you</p> <p>15 can get a late lunch.</p> <p>16 VIDEOGRAPHER: Going off video record.</p> <p>17 (Thereupon, a brief recess was taken.)</p> <p>18 VIDEOGRAPHER: We're back on video record.</p> <p>19 Q. (BY MR. GARBER) Mr. McSurdy, I just want</p> <p>20 to make sure, you don't -- did you review the note</p> <p>21 that was actually sent to David Stern's office in</p> <p>22 support of this foreclosure?</p> <p>23 A. Which note was that?</p> <p>24 Q. There was a note, a note for the mortgage,</p> <p>25 the mortgage note of the Macks.</p>	<p>Page 118</p> <p>1 A. Yes.</p> <p>2 Q. Okay, yes, I see it.</p> <p>3 MR. GARBER: Mr. McSurdy, I don't have any</p> <p>4 further questions. Thank you very much for your ---</p> <p>5 MR. TEW: Let me have one word with</p> <p>6 Forrest before we -- I may have a question or have</p> <p>7 him supplement an answer.</p> <p>8 VIDEOGRAPHER: Going off video record.</p> <p>9 (Thereupon, a brief recess was taken.)</p> <p>10 VIDEOGRAPHER: We're back on video record.</p> <p>11 CROSS EXAMINATION</p> <p>12 BY MR. TEW:</p> <p>13 Q. Forrest, Plaintiff's counsel or actually</p> <p>14 Defendants' counsel asked you about your knowledge of</p> <p>15 any indemnification discussions or the</p> <p>16 indemnification provision in the contract between</p> <p>17 GMAC and the Law Firm of David J. Stern and I</p> <p>18 instructed you not to answer, but so that we don't</p> <p>19 spin our wheels here, I will let you talk about</p> <p>20 anything you know, except what you may have discussed</p> <p>21 with the law firm's counsel or what you may have</p> <p>22 heard at any mediation --</p> <p>23 A. Okay.</p> <p>24 Q. (Continuing) -- on that subject.</p> <p>25 A. Okay. My only involvement with the</p>
<p>1 A. Oh, did I review -- I saw that it was in</p> <p>2 the file when I was transmitting a copy per your</p> <p>3 request to GMAC's counsel, but I did not actually</p> <p>4 look at the terms of the note, no, I did not.</p> <p>5 Q. Was that note in the electronic file or in</p> <p>6 the paper file?</p> <p>7 A. It was definitely in the electronic file.</p> <p>8 Q. So if it was in the electronic file, it</p> <p>9 would have been found in Exhibit G to this</p> <p>10 deposition, correct?</p> <p>11 A. Yes, unless I'm -- unless I'm getting</p> <p>12 confused in having looked at -- I'm pretty sure that</p> <p>13 it was a separate part in the electronic file that I</p> <p>14 sent, but maybe I'm mistaken. If you want me to look</p> <p>15 through it again, I'd be glad to look through it.</p> <p>16 Q. I'll take a brief look. You're probably</p> <p>17 right.</p> <p>18 A. And the reason I say that, too, is the</p> <p>19 practice is normally when the note's received, it's</p> <p>20 scanned to Tracker.</p> <p>21 Q. So it would have been part of your</p> <p>22 electronic system, wouldn't it be?</p> <p>23 A. It should have been, yes.</p> <p>24 I found it. 1269.</p> <p>25 Q. 1269?</p>	<p>Page 119</p> <p>1 indemnification issue was receipt of a letter. It</p> <p>2 may have been -- it was from someone at Mr. Smith's</p> <p>3 office following up the initial notification letter</p> <p>4 that there was a problem in this file and that a</p> <p>5 default judgment had been entered on the</p> <p>6 Counterclaim.</p> <p>7 A second letter was sent to my attention,</p> <p>8 which I turned over to Mr. Tew, demanding</p> <p>9 indemnification with respect to the Mack matter, and</p> <p>10 that's the extent of my involvement.</p> <p>11 REDIRECT EXAMINATION</p> <p>12 BY MR. GARBER:</p> <p>13 Q. So as far as you know, there's been no</p> <p>14 settlement with GMAC over the Mack case?</p> <p>15 A. To my knowledge, no, there's been no</p> <p>16 settlement.</p> <p>17 MR. GARBER: Okay, I don't have any</p> <p>18 further questions.</p> <p>19 COURT REPORTER: Does he want to read or</p> <p>20 waive?</p> <p>21 THE WITNESS: I don't want to read.</p> <p>22 VIDEOGRAPHER: Time is 1:55. This</p> <p>23 concludes the deposition.</p> <p>24</p> <p>25</p>

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1 (Whereupon, reading, signing and Notice
2 of Filing were waived, and the
3 deposition was concluded at 1:55 p.m.)
4
5
6
7
8

9 CERTIFICATE OF OATH

10 STATE OF FLORIDA)
11 COUNTY OF DADE)
12 I, the undersigned authority,
13 certify that FORREST G. McSURDY personally appeared
14 before me and was duly sworn.
15 WITNESS my hand and official seal
16 this 20th day of April, 2012.
17
18

19 CINDY HART
20 Court Reporter

21 My commission #EE 105726
My commission expires:
22 June 23rd, 2015
23
24
25

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1 CERTIFICATE
2 STATE OF FLORIDA)
3 COUNTY OF DADE)
4 I, the undersigned authority, hereby
5 certify that the foregoing transcript, pages 1 to 123
6 is a true and correct transcript of the Videotaped
7 Deposition of FORREST G. McSURDY, taken before me at
8 the time and place stated in the caption thereof.
9 I further certify that said witness was
10 duly sworn according to law.
11 I further certify that I am not of counsel
12 to either of the parties to said cause or otherwise
13 interested in the event thereof.
14 IN WITNESS WHEREOF I hereunto set my hand
15 and affix my official seal of office this 20th day
16 of April, 2012.
17
18

19 Cindy Hart, Court Reporter,
20 Notary Public in and for the
State of Florida at Large.
21
22

My Commission #EE 105726
My Commission expires:
June 23rd, 2015.
23
24
25